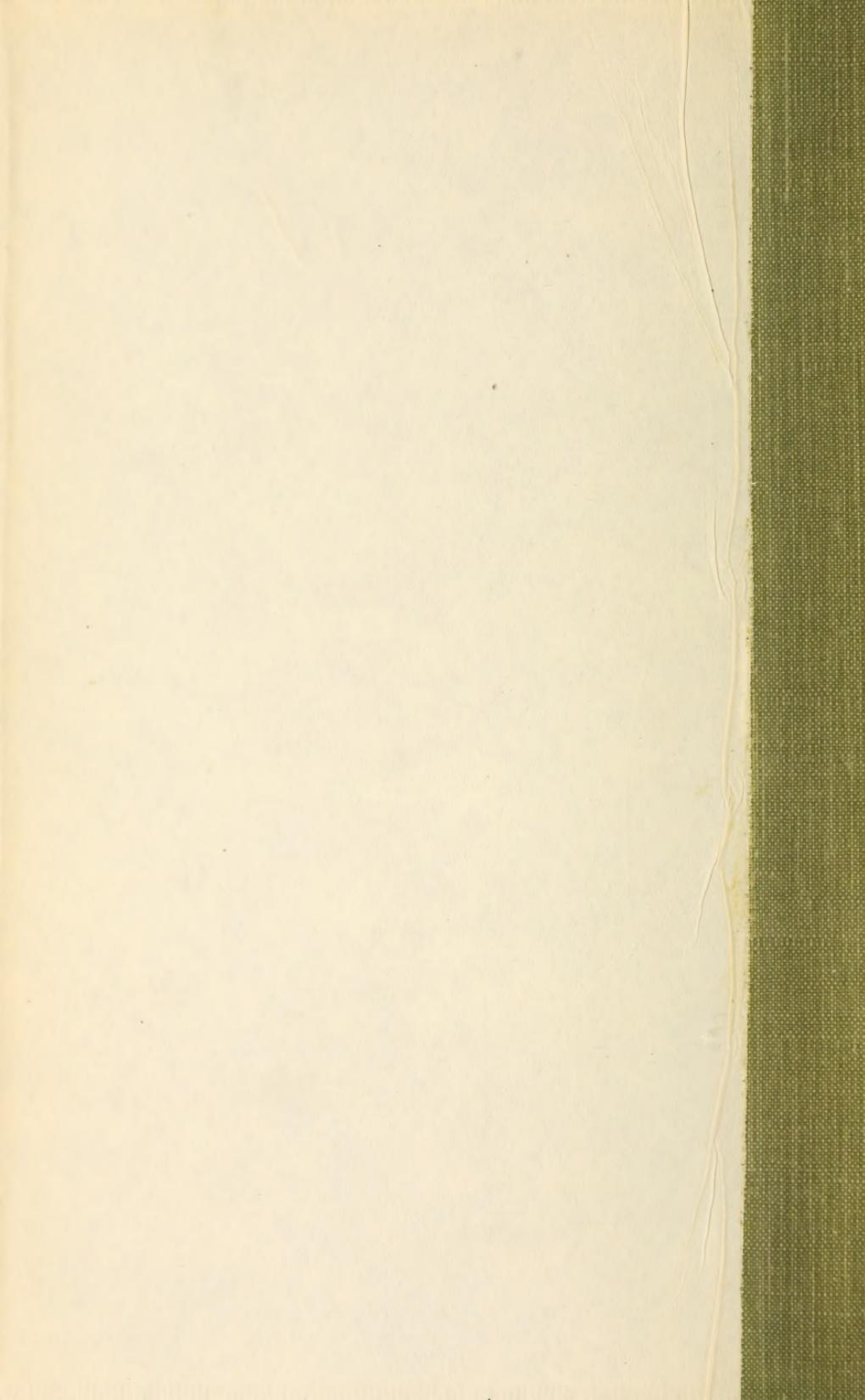




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# THE DEVELOPMENT OF NATIONAL ADMINISTRATIVE ORGANIZATION IN THE UNITED STATES

BY

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A. B. Knox College, 1919

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## THESIS

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## PREFACE

National administrative organization in the United States has heretofore received scant attention from writers in the field of politics and government. Professor Fairlie's well-known treatise on *The National Administration of the United States* still remains the only connected discussion of the activities and organization of that branch of our national government, which, during the present century at least, has presented problems exceeding in importance those of legislation and judicial procedure. A few scattered articles and, more recently, several exhaustive treatises have been written on various phases of national administration in the United States, but none of these approach the problem primarily from the standpoint of administrative organization.

It is to present a connected, though necessarily condensed, discussion of the development of national administrative organization in the United States, and to point out the principal tendencies in that development, that the present monograph has been undertaken. It has seemed best to limit the scope of this study to include only the establishment and organization of the central administrative system in Washington. Thus the many important questions with respect to the organization of the several branches of administration in the field, such as the diplomatic and consular services, the internal revenue system, the customs administration, and the postal service have received no consideration.

The writer takes this opportunity to express his gratitude to the members of the Political Science Department of the University of Illinois for valuable suggestions and criticisms. He is especially indebted to Professor John A. Fairlie, under whose thorough instruction his interest was first aroused in the problems of administration, and who has sympathetically guided and advised him in the preparation of this study. He accepts full responsibility, however, for any errors of fact or judgment.

LLOYD M. SHORT.

University of Missouri.

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# THE DEVELOPMENT OF NATIONAL ADMINISTRATIVE ORGANIZATION IN THE UNITED STATES

## CHAPTER I

### INTRODUCTION

**The Function of Administration.** Before beginning an intensive study of the development of national administrative organization in the United States, it is desirable to determine, with a maximum degree of precision, the exact meaning and scope of the term "administration," as used to denote one of the major functions of government, to differentiate between administration and other governmental functions, and to indicate the particular department or departments in the national government charged with the exercise of administrative powers. The history of political theory reveals the fact that only two distinct classifications of governmental powers have received widespread recognition and extensive support. The first is the so-called classical theory, which embodies a threefold division of governmental powers; namely, legislative, executive, and judicial. Aristotle, Cicero, Polybius, and other ancient political writers are looked upon as the originators of this system of classification. Aristotle, for example, designated the three classes of governmental powers as deliberative, magisterial, and judicial.<sup>1</sup> Montesquieu was the first modern writer to propose this threefold division, and was the first to make the theory of the separation of powers a doctrine of liberty.<sup>2</sup> Blackstone laid down, in his *Commentaries on the Laws of England*, essentially the same principle as that sponsored by Montesquieu.<sup>3</sup>

The second proposed classification which deserves recognition is that advocated by a number of French writers and by Professor

<sup>1</sup> Aristotle, Works, Vol. X, *Politica* (Trans. Jowett), Bk. IV, ch. 14 (1921).

<sup>2</sup> Montesquieu, *Esprit des lois*, Bk. XI, ch. 6 (1858).

<sup>3</sup> Blackstone, *Commentaries on the laws of England*, I, 51 (1773).

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Goodnow in the United States. These authorities recognize only two classes of governmental powers; namely, those which are concerned with the formulation and expression of the will of the state, and those which have to do with the execution of that will. Thus M. Ducrocq, one of the noted authorities on French administrative law, says: "The mind can conceive of but two powers: that which makes the law, and that which executes it."<sup>4</sup> Goodnow designates these two powers as Politics and Administration.<sup>5</sup>

Mr. W. F. Willoughby offers what he believes to be a more satisfactory and logical classification of governmental powers than those hitherto proposed. This writer says that the defect in the threefold or classical division lies in the fact that it fails to distinguish and make separate provision for the functions of electoral action and administration.<sup>6</sup> The electorate as a distinct branch of government is said to be the result of the rise of popular government, and is composed of that body of citizens exercising voting or electoral powers. In so far as any account at all is taken of the function of administration in the threefold classification of governmental powers, says the writer, it is confused with, and treated as a part of, the executive function. Mr. Willoughby feels that the confusion of the terms "executive" and "administrative" is exceedingly unfortunate, as the two terms should be employed as connoting operations which are distinct in character. "The executive function," he concludes, "is the function of representing the government as a whole, and of seeing that all of its laws are complied with by its several parts. The administrative function is the function of actually administering the law as declared by the legislative and interpreted by the judicial branches of the government."<sup>7</sup>

From the standpoint of psychological analysis, it would seem that the "duality" theory, whereby all the actions of the state or

<sup>4</sup> Ducrocq, *Cours de droit administratif*, I, 29 (1881).

<sup>5</sup> "There are, then, in all governmental systems two primary or ultimate functions of government, viz.: the expression of the will of the state and the execution of that will. There are also in all states separate organs, each of which is mainly busied with the discharge of one of these functions. These functions are, respectively, Politics and Administration." Goodnow, *Politics and administration*, 12 (1900).

<sup>6</sup> Willoughby, *Introduction to the study of the government of modern states*, 229 (1919).

<sup>7</sup> *Ibid.*, 232.

its organs are said to group themselves under two heads, designated as Politics and Administration by Professor Goodnow, provides the best system for the classification of governmental powers. Yet Professor Goodnow, himself, recognizes the obvious fact that the function of administration or the execution of the state will is composed of several distinct, if not primary, functions. In the first place, administration may be either of justice or of government. As no legislature or legislative body can express the will of the state with respect to all matters of human conduct so clearly that no dispute as to its meaning may arise, some authority, non-legislative in character, must be provided to interpret the will of the state in case of such dispute. "The action of such non-legislative authority is usually spoken of as the administration of justice, and the authority to which this branch of the function of administration is intrusted is usually called the judicial authority."<sup>8</sup> The function of administration apart from its judicial side may be called the administration of government. The latter is also recognized as being susceptible of differentiation. Upon analysis, says Goodnow, it will be seen that it consists of several elements: (1) The executive function; (2) the quasi-judicial function; (3) the statistical and semi-scientific functions; and (4) the function of establishing, preserving, and developing the governmental organization.<sup>9</sup>

Thus it will be seen, that the three systems of classification referred to are not entirely incompatible with each other. In the threefold and fivefold systems, the judicial function is regarded as primary and coördinate with other functions, while in the two-fold system it is regarded as a part of the primary function of administration.<sup>10</sup> The electoral function recognized by Mr.

<sup>8</sup> Goodnow, *op. cit.*, 73.

<sup>9</sup> *Ibid.*, 73 *et seq.*

<sup>10</sup> Mr. Bondy, in his monograph on The Separation of Governmental Powers, takes exception to the "duality" theory in this respect, saying: "It might with equal propriety be said that all that is required to carry on government is that laws should be expressed and executed, and that two powers appear in every state, the legislative and the executive; that the legislative power is generally divided into two organs, the legislative, which is active, and which at its pleasure interprets and expresses the will of the state, and the judicial, which is inactive and has no initiative, but which interprets and expresses the will of the state whenever a legal controversy arises as to what that will is."—Columbia University, Studies in History, Economics and Public Law, V, 147-48 (1896).

Willoughby is divided, under the "duality" theory, between the two primary functions of politics and administration. When the electorate is called upon to express definitely the will of the state, as in the case of the initiative and referendum, its action is clearly an exercise of political power, while in its task of choosing legislators and executive officers, its work comes under what Goodnow calls "the function of establishing, preserving, and developing the governmental organization." It is the function of administration, as that term is employed by Mr. Willoughby, that offers the greatest difficulty in the attempt to reconcile it with the other two systems of classification. As the exponent of the fivefold classification himself points out, the classical theory either fails to recognize the function of administration or, what is more probable, recognizes it only as a part of the executive function. What Professor Goodnow terms the quasi-judicial, the statistical, and the semi-scientific functions, are clearly a part of the function of administration as conceived by Mr. Willoughby. It would also seem that the executive function, which Goodnow defines as "the mere execution of the expressed will of the state," is also a part of Willoughby's administrative function. If the latter analysis is the correct one, the "duality" theory makes no distinction between the functions of execution and administration.

Without attempting to go further into the merits of these three systems of classification, it must be recognized that, although the distinction drawn by Mr. Willoughby between executive and administrative functions—the one having to do with the determination of general policies, and involving the exercise of judgment in its use; the other being concerned with the putting into effect of policies by other organs—is a logical one, in theory at least, and aids in forming a precise conception of the term "administration" as it is employed in this monograph, yet it is extremely difficult to distinguish sharply between the two functions with respect to a particular governmental activity. In many cases the law, as the expressed will of the state, confers upon distinctly administrative authorities, broad discretionary powers, in the exercise of which is involved the determination of policy. This point will be more clearly brought out in describing the actual composition and activities of the national administration in the United States.

**The Administration as a Governmental Department.** In the most primitive types of political organization, the exercise of all governmental powers was intrusted to one individual, and the history of all monarchic governments indicates a tendency to concentrate governmental powers in the hands of the same authority. A growing necessity for a division of labor, due to the increasing complexity of political conditions, and a desire to escape from the evils of absolutism, has led all states, whether monarchic, aristocratic, or democratic, to distribute the principal powers of government among distinct organs or departments.

Aristotle, the first writer to propose a threefold division of governmental powers, also distinguished between a like number of governmental departments: the general assembly, deliberating upon public affairs, a body of magistrates, and a judiciary.<sup>11</sup> Montesquieu, the first to hold that the separation of powers is indispensable to civil liberty, said: "When the legislative and executive powers are united in the same person or body there can be no liberty, because apprehensions might arise lest the *same* monarch or senate should *enact* tyrannical laws, to execute them in a tyrannical manner." Again, he said: "There is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the *judge* would then be the legislator. Were it joined to the executive power, the judge might behave with the violence of an oppressor. There would be an end of everything, were the same man or the same body, whether of nobles or of the people, to exercise these three powers, that of enacting laws, that of executing the public resolutions, and that of trying the causes of individuals."<sup>12</sup>

Blackstone, an exponent of the threefold division of governmental powers, said: "In all tyrannical governments the supreme magistracy, or the right both of making and of enforcing the laws, is vested in one and the same man or one and the same body of men; and whenever these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed,

<sup>11</sup> Aristotle, *op. cit.*, Bk. IV, ch. 14.

<sup>12</sup> Montesquieu, *op. cit.*, Bk. XI, ch. 6, 129.

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in his quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself." As to the necessity of the separation of the judicial from the legislative and executive power, he said: "Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their opinions, and not by any fundamental principles of law; which though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance of the legislative."<sup>13</sup>

The advocates of the "duality" theory also recognize the necessity of intrusting the functions of government to separate and distinct governmental organs. Thus Professor Goodnow says: "The fact is, therefore, that not merely may these two functions be distinguished in all kinds of governments, but that in every government more or less differentiated organs are established. Each of these organs, while not perhaps confined exclusively to the discharge of one of these functions, is still characterized by the fact that its action consists largely or mainly in the discharge of one or the other. This is the solution of the problem of government which the human race has generally adopted. It is a solution, further, which is inevitable both because of psychological necessity and for reasons of economic expediency."<sup>14</sup> Goodnow explains Montesquieu's differentiation of three rather than two governmental functions by the fact that the latter's theory was derived very largely from a study of English institutions, whereas England was almost the only country of the civilized world which, at the time he wrote, made a clear distinction in its governmental organization between the executive and judicial authorities.<sup>15</sup> "It was only natural," he says, "that Montesquieu

<sup>13</sup> Blackstone, *op. cit.*, I, 146, 269.

<sup>14</sup> Goodnow, *op. cit.*, II.

<sup>15</sup> The Act of Settlement, passed in 1701, is cited by Professor Goodnow as establishing the independence of the judiciary. This act provided that judges should hold office during good behavior, but might be removed upon the address of both houses of Parliament. Thus, the act of 1701, while establishing the independence of the judges as regards the executive, did not mark the complete separation of the judiciary from the legislative branch of the government. Account also should be taken of the fact that Justices of the Peace in England, who exercise judicial powers in local areas, are still subject to removal by the Crown.

should find, in the independence of the judiciary, the recognition of a judicial power separate from and independent of the executive power.”<sup>16</sup>

Mr. Willoughby’s fivefold classification of governmental functions also calls for differentiation between a like number of governmental agencies, each intrusted with the predominant, if not the exclusive, exercise of a particular power. The electorate, as a distinct organ of government, is said to be the result of the transfer of political authority from an absolute monarch to the people, thus compelling the latter to organize themselves for the exercise of the power so acquired. This they have done by making a selection of those of their number who shall act for them. These members constitute what is known as “the electorate,” that is, the body of citizens exercising voting or electoral powers. “This body it need hardly be pointed out,” says Willoughby, “constitutes not only a distinct branch of the political system of a country, but has clearly distinguishable and definite functions. Its existence gives rise to many distinct problems: how it shall be constituted, what shall be its powers and duties, what its methods of procedure, what its relations to the other branches of government, etc. The issue between Democracy and Representative Government is distinctly a problem of this branch. It follows, therefore, that the existence of this branch as a distinct branch of government should be recognized and the problems connected with it be given independent consideration.”<sup>17</sup>

In emphasizing administration as a distinct branch or department of government rather than as a part of the executive department,

<sup>16</sup> Goodnow, *op. cit.*, 12.

<sup>17</sup> Willoughby, *op. cit.*, 230. The writer admits that the electorate may be looked upon either as an integral part of the machinery of government or as standing outside of the government, strictly speaking. In a purely representative government, some advantage may result from taking the latter position. The adoption of the Initiative and Referendum, and other devices of direct democracy, whereby the electorate itself seeks to perform certain purely governmental functions, such as the formulation of governmental policies and participation in the actual work of legislation, makes preferable the consideration of the electorate as a branch of the government proper. In practice, however, the choice between these two positions is of relatively little importance. “The important thing,” he concludes, “is to recognize that, in the electorate, we have to deal with a distinct branch of the political systems of modern states, and one which gives rise to problems as difficult of solution as those presented by any other branch.”

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Mr. Willoughby points out the difference between the two functions of execution and administration which make necessary their exercise by distinct governmental organs. The first difference to be observed, he says, "is the difference between the function of seeing that laws are enforced and that of actually doing the things which the laws call for. This distinction is specially apparent where the actual exercise of authority is distributed among a number of organs or parts. Where this is the case it is evident that there must be some authority whose special function it is to see that the laws governing this distribution, determining the special duties of the several parts and regulating the relations of the latter with each other are in fact complied with. Without some such authority the several parts cannot be correlated into a single harmonious system and made to work in proper coöperation with each other for the attainment of a common end. The second distinction is that between the act of an organization as a whole, and that of one of its parts. There are many cases where governmental action should represent the action of the government as a unit. This applies especially to the whole field of international relations in which is involved the intercourse of sovereign states with each other. This makes it imperative that there shall be some organ or authority whose special function it is to represent the government in this capacity."<sup>18</sup>

The necessity of distinguishing between the executive and administrative departments, as brought out in Mr. Willoughby's work, is at least partially recognized by Professor Goodnow, who admits that it is impossible to assign each of the two primary functions of government to a separate authority, not merely because the exercise of governmental power cannot be clearly apportioned, but also because, as political systems develop, these two primary functions of government tend to be differentiated into minor and secondary functions. The discharge of each of these minor functions is intrusted to somewhat separate and independent governmental organs. Each of these organs has its own name and place in the governmental system. Thus, upon analysis, it will be perceived that three different state organs participate in formulating and expressing the will of the state: (1) The

<sup>18</sup> *Ibid.*, 231.

constitution-making authority, that is, the people, who express the will of the state as to the form of governmental organization and the fundamental rights of the individual; (2) the legislature, which expresses the will of the state in most cases where it has not been expressed in the constitution; (3) the chief executive or subordinate executive authorities, who may, through the issue of ordinances, express the will of the state as to details where it is inconvenient for the legislature to act.<sup>19</sup>

The same is also true of the function of administration—the execution of the will of the state. "If we analyse the organization of any concrete government," says Goodnow, "we shall find that there are three kinds of authorities which are engaged in the execution of the state will. These are, in the first place, the authorities which apply the law in concrete cases where controversies arise owing to the failure of private individuals or public authorities to observe the rights of others. Such authorities are known as judicial authorities. They are, in the second place, the authorities which have the general supervision of the execution of the state will, and which are commonly referred to as executive authorities. They are, finally, the authorities which are attending to the scientific, technical, and, so to speak, commercial activities of the government, and which are in all countries, where such activities have attained prominence, known as administrative authorities."<sup>20</sup>

"As government becomes more complex," he continues, "these three authorities, all of which are engaged in the execution of the will of the state, tend to become more and more differentiated. The first to become so differentiated are the judicial authorities. Not only is this differentiation of the judicial authorities first in point of time, it is also the clearest. Indeed, it is so clear in some instances as to lead many students, as has been pointed out, to mark off the activity of the judicial authorities as a separate power or function of government."<sup>21</sup> No doubt Mr. Willoughby would point out that the ever increasing complexity of government also necessitates a distinct differentiation between the executive and administrative authorities.

<sup>19</sup> Goodnow, *op. cit.*, 16-17.

<sup>20</sup> *Ibid.*, 17.

<sup>21</sup> *Ibid.*, 18.

This much is certain, that Professor Goodnow, in addition to recognizing the existence of the functions of electoral action and administration, as that term is used in its narrowest sense, at least as parts of the two primary functions of politics and administration, also recognizes the existence of separate organs of government for the exercise of those functions, namely the electorate and the administration, which Willoughby chooses to elevate to the position of governmental departments, coördinate with the executive, legislative, and judicial departments. Goodnow, however, calls attention to the fact that governmental functions do not correspond exactly to governmental organs; *i. e.*, there is no department or organ of government which exercises exclusively either the function of expressing or of executing the will of the state. Here again this writer's analysis, from the psychological viewpoint, seems to be the correct one, since, in man also, there is no separate and distinct organ for deciding upon or for controlling action. His discussion on this point is best given in his own words: "No political organization, based on the general theory of a differentiation of governmental functions, has ever been established which assigns the function of expressing the will of the state exclusively to any one of the organs for which it makes provision. Thus, the organ of government whose main function is the execution of the will of the state is often, and indeed usually, intrusted with the expression of that will in its details. These details, however, when expressed, must conform with the general principles laid down by the organ whose main duty is that of expression. That is, the authority called executive has, in almost all cases, considerable ordinance or legislative power. On the other hand, the organ whose main duty is to express the will of the state, *i. e.*, the legislature, has usually the power to control in one way or another the execution of the state will by that organ to which such execution is in the main intrusted. That is, while the two primary functions of government are susceptible of differentiation, the organs of government to which the discharge of these functions is intrusted cannot be clearly defined."<sup>22</sup>

**National Administration of the United States.** It is universally recognized by writers on the United States Constitution that the

<sup>22</sup> *Ibid.*, 15. For a recent discussion of this subject see Fairlie, The separation of powers, *Michigan Law Review*, February, 1923.

classical or threefold division of governmental powers, as proposed by Montesquieu in France and Blackstone in England, was well known to American statesmen at the time of the framing of that historic document, and that that portion of the doctrine which declared that the power of enacting laws, of interpreting and of executing them, be these powers alike or different in their nature, should be vested in three departments distinct and separate from each other, was vigorously upheld as essential to the protection of civil liberty. The American version of the doctrine has been expressed as follows by Justice Miller of the United States Supreme Court: "It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether state or national, are divided into three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of the system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."<sup>23</sup>

That the framers of the Constitution, however, attempted to classify governmental powers according to their intrinsic nature and to clothe each of the several organs or departments with the exclusive exercise of a particular function, is vigorously denied by Mr. Bondy in his work on *The Separation of Governmental Powers*.<sup>24</sup> This writer contends that, having vested the legislative power, meaning thereby only the power of enacting general laws for the entire government, in the legislature; judicial power, meaning thereby only the power of determining and protecting the rights of persons under the constitution and constitutional laws, in the courts; and executive power, meaning thereby the power of seeing that the laws are faithfully executed, in the

<sup>23</sup> *Kilbourn v. Thompson*, 103 U. S. 168, 190 (1880).

<sup>24</sup> Bondy, *op. cit.*, 206 *et seq.*

executive department; they next considered, in the light of the experience of past governments, other important powers which they thought their government in the course of its existence would probably be called upon to exercise. "They did not enter," he says, "into a philosophical discussion as to whether such a power was legislative, executive, or judicial in its nature, but deliberated in which one or more of the departments already established by them the given power could with greatest propriety and safety be vested."<sup>25</sup> Thus certain powers (such as the pardoning power and the power of negotiating treaties) were vested in the executive, not because they were necessarily executive in character, but because the organization and methods of the executive department were such that those powers could be better exercised by it than by the department to which they strictly belonged.

Evidence is not lacking that, while the doctrine of the separation of powers was everywhere upheld as essential to the protection of individual liberty, and state governments were organized as nearly in accordance with the theory as considerations of expediency and efficiency permitted, yet the framers of the federal Constitution recognized the impracticability, not to say the undesirability, of attempting to provide in that instrument absolute and complete separation. Thus James Madison, writing in the "Federalist," declared: "Experience has instructed us, that no skill in the science of Government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science."<sup>26</sup> Calling attention to the fact that Montesquieu viewed the English Constitution as the standard or mirror of political liberty, and that the famous French writer merely sought to deliver in the form of elementary truths the several characteristic principles of that particular system, Madison said: "On the slightest view of the British Constitution we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other . . . . From

<sup>25</sup> *Ibid.*, 207.

<sup>26</sup> The Federalist (ed. Dawson), No. 36, 243.

these facts, by which Montesquieu was guided, it may clearly be inferred, that in saying, ‘There can be no liberty, where the Legislative and Executive powers are united in the same person, or body of magistrates,’ or, ‘if the power of judging be not separated from the legislative and executive powers,’ he did not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free Constitution are subverted. This would have been the case in the Constitution examined by him, if the King, who is the sole Executive Magistrate, had possessed also the complete Legislative power, or the supreme administration of Justice; or if the entire Legislative body had possessed the supreme Judiciary, or the supreme Executive authority.”<sup>27</sup>

Madison also pointed to the constitutions of the several states, in which, he said, “. . . we find that notwithstanding the emphatical, and in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct.”<sup>28</sup> Madison himself, a defender of the doctrine of separation in its qualified form, declared that “unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free Government, can never in practice be duly maintained,” and further that while “the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, it is equally evident, that neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers.”<sup>29</sup>

Regardless of whether the constitution makers sought definitely to apply the theory of the separation of powers in its qualified form, in setting up the national government of the United States,

<sup>27</sup> *Ibid.*, No. 46, 335-36.

<sup>28</sup> *Ibid.*, 337.

<sup>29</sup> *Ibid.*, No. 47, 343.

the result of their labors was certainly far removed from an absolute and complete separation, for the functions of the three principal organs of government—the Congress, the President, and the Courts—were so defined and their exercise so distributed that no one of the governmental departments can act entirely independent of the others within its own sphere. It remains to be considered what the framers of the Constitution did with respect to the distribution among the several governmental departments of strictly administrative powers.

*Constitutional Grant of Administrative Powers.* Mr. Willoughby is authority for the statement that the framers of the Constitution “failed utterly to recognize or to make any direct provision for the exercise of administrative powers.” “In consequence of this failure,” he says, “our entire constitutional history has been marked by a struggle between the legislative and executive branches as to the relative parts they should play in the exercise of this power.”<sup>30</sup> Furthermore, this writer believes it a mistake to hold that the framers of the Constitution employed the term executive as including what are now known as administrative powers and that it was their intention that the President should be the head of the administration. “There can be no question,” he contends, “but that they used the term executive in its technical sense as covering only the political duties of the titular head of the nation;” and in support of this contention, he quotes the following from Professor W. W. Willoughby’s work on The Constitutional Law of the United States: “. . . It was undoubtedly intended that the President should be little more than a political chief; that is to say, one whose functions should, in the main, consist in the performance of those political duties which are not subject to judicial control. It is quite clear that it was intended that he should not, except as to these political matters, be the administrative head of the government, with general power of directing and controlling the acts of subordinate federal administrative agents.”<sup>31</sup>

Not only is no specific reference made in the Constitution to the function of administration as one of the distinct powers of

<sup>30</sup> Willoughby, *op. cit.*, 242.

<sup>31</sup> *Ibid.*, 251. Willoughby, W. W., *Constitutional law of the U. S.*, II, 1156 (1910).

government, but only an indirect reference is made to the matter of administrative organization; namely, in the provisions that the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices," and that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."<sup>32</sup> The obvious implication to be made from these constitutional provisions is that the framers of the Constitution contemplated the establishment of administrative or executive departments, and the organization of such departments by acts of Congress.

*Congress Vested with Powers of Control over Administration.* Whatever may have been in the minds of the framers of the Constitution with respect to the actual exercise of administrative power, Congress, and not the President, has come to be recognized as the *primary* source of such power. It is Congress which determines how the government shall be organized for the performance of its administrative duties, what offices shall be provided, what compensation shall be paid, and what shall be their specific duties; consequently, all the administrative officers of the government, including the President himself, when the performance of administrative duties has been intrusted to him, are but agents of Congress and subject to its orders and control. This predominant authority of Congress with respect to matters of administration was recognized by the courts in the case of *United States v. Kendall*, in which was raised the question of the relative power of Congress and the President over the acts of the Postmaster General. In the course of its opinion, the court said: "The legislature may prescribe the duties of the office, at the time of its creation, or from time to time, as circumstances may require. If those duties are absolute and specific, and not, by law, made subject to the control or discretion of any superior officer, they must be performed, whether forbidden or not, by any other officer. If there be no other officer who is, by law, specially authorized to direct how the duties are to be performed, the officer, whose duties are thus prescribed by law, is bound to execute them according to

<sup>32</sup> Art. 2, Sec. 2, Pars. 1 and 2.

his own judgment. That judgment cannot lawfully be controlled by any other person . . . . As the head of an executive department, he [the Postmaster General] is bound, when required by the President, to give his opinion, in writing, upon any subject relating to the duties of his office. The President, in the execution of his duty, to see that the laws be faithfully executed, is bound to see that the Postmaster General discharges ‘faithfully’ the duties assigned to him by law; but this does not authorize the President to direct him how he shall discharge them.”<sup>33</sup>

The United States Supreme Court, in upholding the decision of the lower court, said: “. . . It by no means follows that every officer in every branch of that [the executive] department is under the exclusive direction of the President . . . . It would be an alarming doctrine, that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President.”<sup>34</sup>

*The President as Head of the National Administration.* Despite the fact, however, that Congress is thus held to be endowed by the Constitution with the ultimate supervising and controlling authority with respect to administrative affairs, a number of important factors have so modified this constitutional control of Congress over administration that Professor Fairlie, in his work on *The National Administration of the United States*, gave expression to what has now became a well-recognized fact when he said: “At the head of the national administration stands the President of the United States.”<sup>35</sup> In the first place, the President’s influence over the personnel of administration, made possible by his power of nomination and removal, has enabled him to obtain administrative action even when he has not had direct legal authority to command it. The effectiveness of this method of control was first clearly demonstrated in the episode of the removal of the bank deposits by President Jackson. The Constitution provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and

<sup>33</sup> U. S. v. Kendall, 26 Fed. Cas. 702, 752 (1837).

<sup>34</sup> Kendall v. U. S., 12 Peters 524, 610 (1838).

<sup>35</sup> Fairlie, *National administration of the U. S.*, I (1905).

Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of the Departments.”<sup>36</sup>

“The question as to what officers are covered by the expression ‘all other officers of the United States whose appointments are not herein otherwise provided for’ as distinguished from ‘inferior officers’ the appointment of which may be vested by Congress in the President alone, in the courts or in the heads of departments, has never been judicially determined. In practice, however, the heads of departments and their major subdivisions, the bureaus, members of commissions and boards, and even the more important local officers such as collectors of customs, collectors of internal revenue and the postmasters of large cities have been treated as ones the concurrence of the Senate in the appointment of which is required. The great majority of all other administrative officers are treated as inferior officers, and their appointment is vested in the President alone or in the heads of the departments.”<sup>37</sup>

Though the Constitution does not specifically grant the power of removal to the President, Congress has repeatedly sanctioned the view that the power constitutionally resides in the President to dismiss all officers who are appointed by him alone or by and with the advice and consent of the Senate. The question of the President’s power of removal was the subject of an extended debate in the first Congress during the discussion on the bill to establish a department of foreign affairs. The contention that the power of dismissal was essential to the proper discharge by the President of his constitutional duty of seeing that the law was properly enforced largely influenced the final decision of Congress

<sup>36</sup> Art. 2, Sec. 2, Par. 2.

<sup>37</sup> Willoughby, *op. cit.*, 256. In this connection, Mr. Willoughby points out that this provision of the Constitution regarding the appointment of officers, both superior and inferior, has been construed by the courts as denying to Congress itself all powers of appointment. This follows from the fact that specific provision is made for the appointment of superior officers and that Congress is not included in the enumeration of authorities in whom the appointment of inferior officers may be vested. Congress can create and abolish offices, but it cannot designate the persons to fill these offices. Cf. U. S. v. Germaine, 99 U. S. 508 (1878).

to the effect that this power was vested in the President. The position thus taken in 1789 has been consistently followed since that time, except for the attempt made by Congress to control the power of President Johnson through the passage of the Tenure of Office Act of 1867, and the provision in the recent Budget and Accounting Act for the removal of the Comptroller General and the Assistant Comptroller General by joint resolution of Congress.<sup>38</sup>

This power of the President not only to appoint those who have opinions concerning the conduct of administration similar to his own, but also to control the action of administrative officers by removing from office those who refuse to carry out his will, places him in a position where he can direct and control the manner in which the administrative power shall be exercised. Furthermore, the exercise of such supervision and control by the President is now looked upon as thoroughly legitimate and is acquiesced in by both Congress and the heads of departments. "It may now be said that the convention is fairly established, that the wishes of the President, in so far as they are not in conflict with provisions

<sup>38</sup> The passage of the Tenure of Office Act of 1867 was a part of the bitter struggle between Congress and the President which culminated in the latter's impeachment. This law was modified in 1869, and finally repealed in 1887, following a conflict between President Cleveland and the Senate over the appointment of persons to fill vacancies caused by suspension during the preceding recess and authorized by the act of 1869.

The Budget and Accounting Act of June 10, 1921, provides for a comptroller general and an assistant comptroller general, to be appointed by the President, by and with the advice and consent of the Senate. These officers may be removed, for certain causes enumerated in the act, by joint resolution of Congress, and "in no other manner except by impeachment." The original budget bill, passed by Congress on May 29, 1919, was vetoed by President Wilson, who held that the provision for the removal of the accounting officers by *concurrent* resolution of Congress was unconstitutional, as it sought to take from the President his constitutional authority to remove such officers. Although the bill signed by President Harding on June 10 substitutes removal by joint resolution in place of by concurrent resolution, thus giving to the President a partial voice in the removal of these officers, yet it clearly violates the long-accepted construction of the constitution with respect to the exercise of this power. That construction, however, was made by Congress and has never been directly passed upon by the United States Supreme Court. The constitutionality of this provision will not likely be questioned, except in the event of a serious break between the President and Congress over the conduct of the accounting office. A further discussion of the provisions of this act will be reserved for a later chapter.

of law, should control administrative officers in the performance of their duties.”<sup>39</sup>

In the second place, the President exercises the power of direction over administration through the constitutional provisions vesting in him the executive power and requiring him to take care that the laws are faithfully executed. Responsibility in respect to matters of administration is thus very definitely imposed upon him. The position taken by the courts, previous to President Jackson’s determined exercise of the power of removal, is expressed, in an opinion rendered in the case of *United States v. Kendall*, as follows: “The President, in the execution of his duties to see that the laws are faithfully executed, is bound to see that the postmaster-general discharges ‘faithfully’ the duties assigned by law; but this does not authorize the President to direct him how he shall discharge them.”<sup>40</sup> After President Jackson had clearly demonstrated what effective use could be made of the power of removal in directing the conduct of administration, the President’s control came to be more clearly recognized. In addition to specific grants of authority by Congress empowering the President to direct the work of the executive departments, the Attorney General and the Supreme Court have repeatedly upheld the President in the exercise of extra-statutory authority with respect to the conduct of administrative affairs. An extreme view of the President’s power was given in an opinion by Attorney General Cushing in 1855: “I think here the general rule to be . . . that the Head of a Department is subject to the direction of the President. I hold that no Head of a Department can lawfully perform an *official* act against the will of the President; and that will is by the Constitution to govern the performance of all such acts. If it were not thus, Congress might by statute so divide and transfer the executive power as utterly to subvert the Government, and to change it into a parliamentary despotism, like that of Venice or Great Britain, with a nominal executive chief utterly powerless,—whether under the name of Doge, or King, or President, would then be of little account, so far as regards the question of the maintenance of the Constitution.”<sup>41</sup>

<sup>39</sup> Willoughby, *op. cit.*, 258.

<sup>40</sup> U. S. v. Kendall, 26 Fed. Cas. 702, 752 (1837).

<sup>41</sup> 7 Op. Atty. Gen., 453, 462-70 (1855).

A more conservative statement made by the same officer concerning the general power of direction vested in the President is as follows: "He [the President] is limited in the exercise of his powers by the Constitution and the laws: but it does not follow that he must show a statutable provision for everything he does. The Government could not be administered upon such a contracted principle. The great outlines of the movements of the Executive may be marked out, and limitations imposed upon the exercise of his powers, yet there are numberless things which must be done, which cannot be anticipated and defined, and are essential to useful and healthy action of government."<sup>42</sup>

In the well-known case of *In re Neagle*, the Supreme Court clearly recognized such extra-statutory executive authority, when it held that the power of the President to see that the laws are faithfully executed authorizes, without any express statutory grant, the designation of a deputy-marshal as a guard to protect a United States judge from probable danger, and that a deputy marshal so assigned cannot be held responsible before any state court for any act performed in the discharge of this duty. Justice Miller, in delivering the opinion of the court, said: "We cannot doubt the power of the President to take measures for the protection of a judge of one of the courts of the United States, who, while in the discharge of the duties of his office, is threatened with a personal attack which may probably result in his death . . . ."<sup>43</sup>

The third important factor contributing toward the concentration of administrative supervision and control in the hands of the President is the more specific authority granted him in the Constitution over particular branches of administration, such as the control of foreign relations and the command of the army and navy. Thus Congress, in creating a Department of Foreign Affairs (the present Department of State) and a Department of War, expressly gave to the President the power to direct and control the operations of these departments. The President, without such powers of direction and control, could not effectively exercise the executive powers vested in him by the Constitution. The Presi-

<sup>42</sup> 6 Op. Atty. Gen., 358, 365 (1854).

<sup>43</sup> *In re Neagle*, 135 U. S. 1, 67 (1889).

dent's control over intercourse with foreign governments is complete, and although actual negotiations are usually carried on by the Secretary of State, that officer acts as the direct and personal agent of the President. In important matters the latter often takes an active part in the negotiations. The President exercises a larger personal influence in the appointment of foreign ministers than in the appointment of other administrative officers, while his power of nominating them cannot be transferred to any other officer. The duties of ambassadors and ministers are performed entirely under his direction; instructions are sent to them, claims and demands presented, and replies to foreign governments are forwarded, from the President, acting through the State Department. While the degree of discretionary action left to the Secretary of State naturally varies from time to time, the responsibility in every case rests on the President alone, and the importance of the matters involved make essential his close personal attention.

The Constitution vests the supreme command of the military and naval forces in the hands of the President. While Congress, by statutory enactment, determines the numerical strength of the army and navy, the number of ships to be built, the location of forts and naval bases, and other matters of general and permanent importance, the President, as commander-in-chief, decides where the different parts of the army and navy are to be stationed and moved, the strength and composition of garrisons and field forces, and the distribution of arms and ammunition. After Congress has declared war, it is the President who decides in what way the war shall be carried on, who directs campaigns and establishes blockades, and who may do whatever is necessary to weaken the fighting power of the enemy.

It is in connection with these specific powers of the President, by means of which he exercises effective control over certain branches of administration, that the theoretical distinction drawn by Mr. Willoughby, and to a certain extent by Professor Goodnow, between the executive and administrative functions is particularly difficult to maintain. While matters of foreign policy or military strategy legally are determined by the President, acting through his subordinates, yet many quite important decisions, involving questions of policy, are left to the discretion of subordinate administrative officers. In fact, if only those persons in the government

service who perform routine duties which do not involve questions of policy are properly a part of "the administration of the United States," the term administration can only be applied to the large class of clerical and mechanical employees in the various administrative departments. It would seem that the real distinction between the two functions is largely a question of degree. At least it must be recognized that the heads of departments and their various subdivisions, the members of administrative boards and commissions, and even the President himself, exercise both executive and administrative powers.

The fourth and last factor contributing to the President's control over administration is the delegation to the President by Congress of broad discretionary powers with respect to the carrying out of its policies, made necessary because of the growing complexity of governmental problems. It has become not only impracticable but almost impossible for Congress to provide in advance, by means of legislation, the precise means that should be employed and the steps that should be taken in carrying through many important classes of governmental undertakings. Consequently, a large part of the control over administration at present exercised by the President rests upon specific statutory authority. Congress seeks only to lay down broad outlines of governmental policy, with the intent that the details of administration shall be determined upon by the President and promulgated by means of executive orders and regulations. This delegation by Congress of *quasi-legislative* power has had a notable effect in increasing the degree of administrative supervision exercised by the President.

We have, then, this situation in the United States, at the present time, with respect to the exercise of administrative power. The Constitution does not provide for an administrative department, coördinate with the other three grand departments of government, but implies subsequent action on the part of Congress in providing the necessary administrative organization. The power to supervise and to control the conduct of administrative affairs, as implied in the constitutional provisions noted above, rests with Congress, which determines what work shall be undertaken, the plant, organization, and personnel that shall be made use of, and the procedure that shall be employed. The President, however, due to his constitutional authority over the personnel of administration, his consti-

tutional responsibility to see that the laws are duly executed, his constitutional control over certain branches of administration in the exercise of executive power, and finally because of statutory authority which Congress, as a matter of expediency, has conferred upon him, has come to exercise a large and increasing measure of direction and supervision over the administrative work of the government. Because of the fact that the President is now generally looked upon by all political parties, by administrative officers, by the public, and even by Congress itself, as the head of the administration, because Congress has often charged him directly with the performance of administrative duties, and, finally, because the exact distinction between the function of execution and that of administration is often one merely of degree, it is necessary that the President be considered a part of "the national administration of the United States," in the further study of that branch of the national government, although he alone constitutes a major governmental department, and is charged with the exercise of a primary governmental function.

**Increased Importance of Administration.** "A dawning progressive era, with its new conception of federal responsibility to the general welfare, daily emphasizes the increasing vital importance of the administrative function in the federal government . . . . Each succeeding Congress witnesses some new and significant responsibility imposed upon the administrative system, and touching more or less intimately a large portion of the people. The vexing problems of the future will no longer be the great constitutional problems of deciding what may be done, or even the broader political problems of deciding what should be done, but will be the purely administrative problems of establishing really effective ways and means of carrying out the people's will."<sup>44</sup>

The writer of this significant quotation has indicated one of the most important tendencies in the national administration of the United States; namely, the increased emphasis placed upon the administrative branch of the national government by students of political problems and by those directly concerned with the affairs

<sup>44</sup> Brinton, Some powers and problems of the federal administrative, 62 Cong. 3 sess., S. doc. 1054. (Reprinted from the *University of Pennsylvania Law Review*, January, 1913.)

of state. Prior to the twentieth century, the administrative organization and activities of the government were scarcely mentioned in books on American government. The powers of Congress, in the light of judicial interpretation of the Constitution, and later, following the appearance of Mr. Bryce's work on *The American Commonwealth*, the methods of legislative procedure and the influence of parties and party machinery, occupied the attention of writers in this field of political science. The growing importance of administrative questions, however, led to their introduction as subjects for public discussion, articles in current periodicals, and an occasional volume on a particular problem. The author of the first comprehensive and systematic work on national administration in the United States, published in 1905, thus emphasizes the increasing tendency to regard problems of administration as of vital importance to the welfare of the nation: "It may indeed be safely asserted that the problems of administration are the important problems of the present; and that they receive the attention which in earlier times was given to problems of constitutional organization."<sup>45</sup>

This marked tendency to emphasize the organization and activities of the administrative branch of the national government is especially noticeable within the past decade. During the latter part of President Taft's administration, a thorough study of the national administration was made by the President's Commission on Economy and Efficiency, and proposals were embodied in the report of that commission to Congress in an effort to coördinate and increase the efficiency of the administrative organs of government. President Wilson's first term witnessed the organization of the Department of Labor and the creation of a number of independent administrative boards and commissions, while the war emergency during his second term called for the creation of a large number of administrative agencies whose work consisted in exercising governmental control and supervision over industry and commerce and the mobilization of the resources of the nation for the successful prosecution of the war. A concerted effort looking toward the adoption of a budget system in the national government reached its fruition in the creation of a Budget Bureau directly

<sup>45</sup> Fairlie, *op. cit.*, v.

responsible to the President a short time after President Harding assumed the duties of office, and one of the major policies incorporated in the legislative program of the Harding administration was a thorough reorganization of the national administration in the interest of economy and efficiency. Emphasizing the importance of administrative reform, President Harding said: "To bring economy and efficiency into government is a task second to none in difficulty," and he assured his hearers that "the party in power is pledged to economy and efficiency, and you may be assured that every energy is being directed to redeem that pledge to the last degree and with all promptness."<sup>40</sup>

What are the fundamental causes for this apparent increase in the importance of administration, as evidenced by the interest shown in the study of the problems of administrative organization and the efforts of those directly concerned with the direction of the affairs of government to promote greater efficiency and economy in administration, is a question deserving serious consideration. Most of these causes have their origin in the changed conception of the American people with respect to the proper function of their government.

"At the time the federal constitution was adopted, more than one hundred and twenty-five years ago, the one great political problem which the men of that time felt called upon to solve was to obtain a form of government which, on the one hand, would have sufficient power and be so organized that it could maintain domestic order and afford protection against foreign aggression, and yet, on the other hand, subject the liberty and freedom of the individual to a minimum of interference and control. The idea dominant was to keep the sphere of governmental activities as limited as possible and so to distribute the political powers that were granted that they would check or balance one another, and thus tend to prevent the assumption and exercise by any one official or branch of the government of undue authority. Comparatively little emphasis was laid upon the problem of bringing into existence an efficient system of government from the modern

<sup>40</sup> Harding, Business in government and the problem of governmental reorganization for greater efficiency, Acad. Pol. Sci., *Proceedings*, IX, 430-31 (July, 1921).

viewpoint since it was the expectation that the government would in fact have but few positive duties to perform.”<sup>47</sup>

A fundamental change has taken place in the attitude of the American people toward their government, since the adoption of the Constitution. No longer is there an *a priori* assumption that a widening of the sphere of public action is an evil. To-day the performance of the so-called essential functions of government constitutes only a relatively small part of its total activities. The present wide scope of governmental activities, vitally affecting a large portion of the people and involving operations on a vast scale, has particularly emphasized the need for a highly integrated administrative system and an administrative personnel capable of efficient and honest conduct of public affairs. The center of interest and effort has shifted to obtaining an efficient and economical performance by the government of the tasks which are laid upon it. Thus the present movement for governmental reform is one that lies largely in the field of administration.

Several aspects of this broadened sphere of governmental control deserve to be noted. In the first place, there has necessarily been a rapid increase in the number of administrative services commensurate with the increase in the number and scope of governmental activities. The present system of executive departments is not provided for by the Constitution, but is the result of congressional action, which has slowly evolved as the national interests became more exacting. “The development of the Cabinet and the executive departments,” says Mr. Hill in his work on The Federal Executive, “is the most interesting thing in the growth of the federal government.”<sup>48</sup> The detailed history of the development of administrative departments, bureaus, and independent commissions will be reserved for later chapters. It is sufficient to point out here that the increase in the number of executive departments from three in 1789 to ten at the present time has been made necessary either by the development in importance of an existing part of the administrative work of the government, or by the assumption of new burdens and an enlargement of the sphere of

<sup>47</sup> Willoughby, The modern movement for efficiency in the administration of public affairs; in Weber, Organized efforts for the improvement of methods of administration, 3 (1919).

<sup>48</sup> Hill, The federal executive, 11 (1916).

national activity. The latter is more strikingly evidenced by the existence of some thirty permanent independent administrative boards and commissions, exclusive of a large number of such services created temporarily during the war emergency.<sup>49</sup> A knowledge of this large group of administrative establishments, of their organization and activities, is necessary for a thorough understanding of American national life as it is at present manifested in the government of the United States.

The mere increase in the number and scope of governmental activities has attracted widespread attention, particularly among educators. College and university professors are devoting much time and effort to formulating and securing the adoption of scientifically determined principles of administrative organization and procedure. Through their work in the classroom, they are endeavoring to lay the foundation upon which the construction of a more efficient administration may be based. "Where twenty years ago public finance and administration was seldom taught except in connection with many diverse topics, to-day this subject is a standard course in the great majority of higher educational institutions. The leaders of the future, so far as they are college men, are being grounded in the essentials of good and efficient government."<sup>50</sup>

A second aspect of the enlarged sphere of governmental activity which has tended to emphasize the importance of administration, is the highly technical character of the administrative tasks which the present day government has to perform and the consequent necessity of greater efficiency on the part of administrative officers. As long as administrative activities were considered of minor importance, no objection was raised to subjecting the personnel of administration to the evils of the spoils system, with its accompanying inefficiency in the conduct of public affairs. "Up to within comparatively few years," says Professor Goodnow, "the existence of this branch of the administration of government [that part of

<sup>49</sup> The magnitude of the national administration, as it exists at the present time, is further emphasized by the fact that approximately 561,000 persons are employed in the 200 or more civil administrative services of the national government. Cf. Civil Service Commission, Annual report, 1922, v.

<sup>50</sup> George, Increased efficiency as a result of increased governmental functions, Amer. Acad., *Annals*, LXIV, 84 (March, 1916).

the primary function of administration not distinctly of a judicial or an executive character] has been practically ignored. Officers whose main duty was the execution of the law . . . have attended to these administrative matters. The distinctly administrative functions naturally were confused with the executive function. It was regarded as proper to attempt to exercise the same control over administrative matters as was exercised, and properly exercised, over the executive function. When, however, administrative matters began to assume greater prominence with the extension of the field of government,—an extension which was largely made in regard to subjects of an administrative rather than of an executive character,—the evil effects of such a treatment of matters of administration could not fail to appear. It is only in those countries which have recognized most fully that administration apart from its executive side is not from the point of view of theory, and should not be from the point of view of fact, connected with politics, that the greatest progress has been made in the improvement of the details of government, which, as in every other field of life, count for so much, much more, in fact than the general principles.”<sup>51</sup> It is this extension of the sphere of governmental activity, making administration more difficult and highly technical in character, which has led to a widespread and continuous demand for civil service reform.

In the third place, the increased burden of taxation, resulting from the enlarged scope of governmental activity, has emphasized possibly more than anything else the importance of administration. The self-interest of the property owner, aroused by the ever-increasing tax rate, is exerting itself in favor of greater efficiency as a means of reducing governmental expenditures. Chambers of commerce and other business men’s groups have appointed committees on taxation and expenditures to secure remedies for the present situation. Taxpayers’ associations, both national and state, have been organized for the purpose of studying the organization and costs of government, disseminating the information secured, and directing a campaign for administrative efficiency. To secure adequate and reliable information upon the subject of administration, prominent business and professional men have met the

<sup>51</sup> Goodnow, *op. cit.*, 83.

expenses of the organization and maintenance of bureaus for governmental research. A nation-wide campaign for the adoption of a budget system in the national government and the introduction of greater efficiency into national administration was conducted by the Chamber of Commerce of the United States.

Finally, the increase in governmental activities, dealing with such diverse questions as land conservation, liquor prohibition, development of good roads, protection of women and children in industry, and the general regulation of commerce and transportation, and necessarily bringing administrative officers in close touch with the public, has led to a greater criticism of administration by persons interested in one or more of the new activities. Large industrial corporations, vitally affected by the work of such administrative agencies as the Federal Trade Commission, the Tariff Commission, and the Interstate Commerce Commission, critically examine the conduct of these services. Shipping interests keep in close touch with the work of the Shipping Board, the Bureau of Navigation, and the Steamboat-Inspection Service. The work of the newly established Railroad Labor Board is of vital concern to both capital and labor engaged in railway transportation. A large part of the activities of the Department of Agriculture bring the officers of that service in direct contact with the agricultural interests of the nation. Further instances need not be cited to indicate how, in this respect, the increase in the scope of governmental activity has tended to emphasize the importance of administration, and has led to a greater and more intelligent demand for administrative efficiency than has heretofore existed.

Such, then, have been the results of the enlarged function of government, in emphasizing the work of administration and in creating a demand for the efficient conduct of public affairs. "The old conditions, always causing inefficiency, were disclosed by the increased size of operations. So long as the government business was a small scale industry, so long as it did not cost the taxpayer large sums of money to operate, so long as it did not come in close touch with the average citizen, it did not attract attention. The people were not impressed with the importance of efficiency in government. Where they were ignorant they were oftentimes indifferent. But the change in the size of the government's activities has set in motion forces which are rudely shocking the indifferent

citizen. The dissatisfaction of the taxpayer, including the large corporations, has been manifested in a campaign of education on public administration and efficiency; the interest of the college aroused by the spectacle of so big a public enterprise, has resulted in collegiate study of these problems; the desire of classes interested in some particular function to secure satisfactory results, has broken down much of the old indifference. In place of popular carelessness, is coming an intense public demand for efficiency. And the same influence is changing the old methods of operation through the introduction of experts and through the reorganization of government to secure greater responsibility.”<sup>52</sup>

The influence of these various causes, resulting from the enlarged sphere of governmental activity, and tending to emphasize the importance of the administrative function of the national government, was greatly increased during the war period. Aside from the vast amount of additional work performed by the permanently constituted administrative services, especially the War, Navy, and Treasury departments, a large number of temporary administrative agencies were established, such as the War Finance Corporation, the War Industries Board, the War Trade Board, the United States Railroad Administration, and the United States Food and Fuel administrations. Not only was the number of these special war agencies remarkable, but the activities in which they were engaged brought them in close contact with the average citizen; and the expenditures which were necessary to carry on their work, while small in comparison with the cost of maintaining and equipping the army and navy, yet added greatly to the heavy tax burden the people were called upon to bear. Men and women, with extensive business experience were drafted to serve in this vast administrative army, and broad powers were granted to the President by Congress whereby the existing administrative organization could be speedily modified to meet the need for efficient and prompt administration. The tremendous importance thus attached, because of the war emergency, to the work of administration is certain to have a lasting effect in the future in placing administrative problems above other governmental questions.

Those responsible for the formulation of governmental policy have come to recognize the importance attached to the work of

<sup>52</sup> George, *op. cit.*, 87.

administration by the nation at large. They are called upon, on the one hand, to insure efficient service by the administrative services, and on the other, to economize in the matter of governmental expenditures. Thus the party in power at the present time has felt the necessity of giving "efficient and economical administration" a place in the front rank of its proposed reform program, and Congress, after years of agitation, finally has adopted a budget system, although a great deal remains yet to be accomplished before a sound administration of governmental finances can be definitely assured.



# I. ADMINISTRATIVE ORGANIZATION TO 1860



## CHAPTER II

### ADMINISTRATIVE ORGANIZATION: 1775-1789

One of the most significant tendencies in the development of national administration in the United States is the change that has taken place in the system or method of administrative organization. Yet the great majority of books and articles dealing with the organization and functions of the executive departments in the national government give little attention to the general principles of administrative organization that have been applied to them throughout the history of the Republic. During the period from 1775 to 1789, when the thirteen colonies were engaged in their struggle to secure and maintain independence, three distinct types of administrative organization were successively adopted. Following the formation of the Union, Congress, after considerable debate, in which the ideas of the framers of the Constitution with respect to administrative organization and the experiences of the Confederation exercised an important influence, adopted the system of single-headed executive or administrative departments. The principle of single-headed control was followed, with but few exceptions, even in the various subdivisions of the departments, until the latter part of the nineteenth century; and the single-headed *régime* may still be said to be the dominant characteristic of national administration. This is in striking contrast to the system of state administration in the United States, where the system of board or multiple control under a great variety of forms is still a marked feature, in spite of the recent widespread movement among the states in the direction of administrative centralization.

Beginning with the establishment of the Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887, many administrative boards and commissions have been set up in the national government, independent from, and outside of, the ten executive departments. This development has been amplified by the continued extension of administrative control over industry and commerce, involving the determination of rates and the adjudication

cation of disputes—powers which, in a democracy, are considered to be too vital to individual liberty and welfare to be exercised by a single individual. The number of these independent administrative commissions was greatly increased during the recent period of emergency, resulting from the entrance of the United States into the World War. It is proposed, within the limits of this monograph, to make a thorough study of these successive changes in national administrative organization, beginning with the organization effected by the Continental Congress in 1775.

The development of executive departments in the United States during the period from 1775 and 1789 has been made the subject of an interesting and valuable study by Mr. J. C. Guggenheimer, which constitutes the third of a series of five essays in the constitutional history of the United States edited by Professor J. Franklin Jameson. It was with the avowed purpose of demonstrating the element of continuity in the development of American governmental institutions that this series of essays was written, and Mr. Guggenheimer's own contribution to this common aim or object was in seeking to secure "the acceptance of the general conclusion that the number of departments, and the principles upon which they were established under the Federal Congress, were determined altogether by their previous development."<sup>1</sup> Consequently, Mr. Guggenheimer was essentially interested in tracing the lines of development within each particular department, and not in making a comprehensive study of the successive changes in administrative organization which were common to all the departments, such as is contemplated in the present monograph. Furthermore, the historical information submitted by Mr. Guggenheimer, whose work was published in 1889, has since been materially augmented by studies made of a particular branch of administration or of the historical development of the national administration as a whole, the writers of which have had access to a large number of public documents, pamphlets, and manuscripts which Mr. Guggenheimer gives no indication of having used in the preparation of his monograph. In addition to these sources of information, the writings of Revolutionary statesmen, many of which have been published since Mr. Guggenheimer's essay was written,

<sup>1</sup> Guggenheimer, Development of the executive departments, 1775-1789, in Jameson, Essays in the constitutional history of the U. S., 184 (1889).

shed a great deal of light on the progress of events during the period under consideration. The writer of the present treatise has made extensive use of the latter source of information.

Because of the essential difference between the method of treatment proposed in this monograph and that adopted by Mr. Guggenheim; because of recent and important contributions to our fund of historical data with reference to administration during the formative period of the United States; and, finally, because of the significance of this early period in connection with the establishment of executive or administrative departments under the Constitution, it seems advisable to undertake a thorough and detailed analysis of administrative organization during the years from 1775 to 1789, placing particular emphasis upon the various stages by which the early statesmen were led to the conviction that the adoption of a system of single-headed administrative control was a primary requisite to securing efficiency and responsibility in the administration of governmental affairs.

**Administration by Committees and Boards.** The Continental Congress which first convened at Philadelphia in May, 1775, soon came to realize the necessity of delegating its executive power. Naturally, the devices first resorted to were those which the Revolutionary statesmen had been accustomed to see amply serve similar ends in their respective colonies. Furthermore, as one writer points out, "the Congress was regarded as a temporary body, assembled for a temporary purpose; and consequently no need for a permanent executive was at first experienced. This was changed when independence was declared, but a serious obstacle yet stood in the way of the development of executive departments. It was through the royal officials in the old colonial governments that the oppression of Great Britain had been most seriously felt, and a widespread distrust of all executive power had grown up in the colonies. This influence was strong in the Continental Congress, and it long delayed the establishment of effective departments for the conduct of the business of the government."<sup>2</sup>

*Committees of Congress.* The proper conduct of the war was the first problem of an executive and administrative character which

<sup>2</sup> Bullock, The finances of the United States from 1775 to 1789, with especial reference to the budget, University of Wisconsin, Bulletin, Economics, Political Science, and History Series, I, 189 (June, 1895).

Congress was called upon to meet. Resolving to place the colonies in a state of defence, a committee was appointed on May 27, 1775 to consider ways and means of securing ammunition and military stores. On June 3 a committee was appointed for the purpose of borrowing money with which to purchase gunpowder. A committee appointed on June 14 was directed to draw up rules for the government of the army, and ten days later a committee of seven was appointed to devise ways and means to put the militia in a proper state for the defense of America. Other important committees, such as the Medical Committee, appointed on September 14 to devise ways and means for supplying the army with medicines, the Secret Committee, appointed on September 18 to secure or provide for the manufacture of gunpowder, arms and cannon, and the Cannon Committee appointed on January 15, 1776, to estimate the number of cannon needed for the defense of the United Colonies and to devise ways and means for procuring the same, were charged with duties of a more permanent character.<sup>3</sup> Thus the conduct of the war was first undertaken through the appointment of numerous committees, each charged with a particular duty and varying in number from three to thirteen, the latter number being usually selected for the more important committees, so that each colony might be represented.

*Board of War and Ordnance.* The impossibility of efficiently carrying on the war through the committee system soon became apparent, however, and Congress was compelled to concentrate executive authority with respect to military affairs in the hands of an administrative board or commission. Several of the colonies, for the direction of their own military affairs, had already found a suitable device in their Councils of Safety and Committees of Observation, which they had established upon the recommendation of the Continental Congress.<sup>4</sup> These councils were composed of the most substantial citizens in each colony, who were charged with the direction and control of all military preparations in their respective colonies. Congress, on June 12, 1776, after an urgent

<sup>3</sup> Journals of the Continental Congress, II, 67, 79, 90, 106, 250, 253; IV, 55.

<sup>4</sup> On July 18, 1775, Congress recommended that each colony should appoint a committee of safety, to superintend and direct all matters necessary for their security and defense, in the recess of their assemblies and conventions.—Journals of the Continental Congress, II, 189.

appeal had been received from General Washington,<sup>5</sup> determined to establish a war office for the conduct of its own military business. A Board of War and Ordnance was appointed, consisting of five members, who were selected from among the members of Congress.<sup>6</sup> This board was granted broad powers of supervision and control over the conduct of military affairs, and it gradually came to assume the work previously performed by the separate committees.<sup>7</sup>

*Board of War.* The important work assigned to this board, however, proved too strenuous to be efficiently carried on by members of Congress. As early as December 26, 1776, a committee was appointed "to prepare a plan for the better conducting the executive business of Congress, by boards composed of persons, not members of Congress."<sup>8</sup> Upon the recommendation of this committee and after considerable deliberation, Congress established on October 17, 1777, a new board to be composed of three members, not delegates in Congress. The size of this board, which was designated simply as the Board of War, was increased to five, three weeks later.<sup>9</sup> The extent to which this new board was made responsible to Congress is evidenced by the following provision in the resolution creating it: "All the proceedings of the Board shall be inspected by Congress, or a committee by them appointed for that purpose, once a month or oftener, as may be thought proper and convenient." The old Board of War and Ordnance continued

<sup>5</sup> "On the thirteenth (June, 1776) a board of war, of which Washington had explained the extreme necessity, was appointed, and John Adams was placed at its head."—Bancroft, History of the U. S., IV, 425 (1886).

<sup>6</sup> Journals of the Continental Congress, V, 434.

<sup>7</sup> Mr. Guggenheimer calls attention, in his essay, to the fact that in name and outward appearance, this body resembled the contemporary English Ordnance Department, while in function it was similar to the colonial councils of safety. The Secretary at War had long been the recognized War Minister of England, while the Board of Ordnance under him was a subordinate body, corresponding to the secret and cannon committees of Congress.—*Op. cit.*, 121.

<sup>8</sup> Journals of the Continental Congress, VI, 1041. In October, 1777, Richard Henry Lee wrote to Washington as follows: "The business of a board of war is so extensive, so important, and demanding such constant attention, that Congress sees clearly the necessity of constituting a new board out of Congress, whose time shall be entirely devoted to that essential department."—Letters of Richard Henry Lee (ed. Ballagh), I, 338.

<sup>9</sup> Journals of the Continental Congress, IX, 818, 960. The report of the committee recommended a board of five members, any three of whom should be a quorum, and proposed to retain the name Board of War and Ordnance.—*Ibid.*, VII, 241.

to exist as a superintending committee and, as its members had seats in Congress, it acted as the spokesman of the new board in the legislative body.<sup>10</sup> The composition of the Board of War was changed by resolution of October 29, 1778, whereby two of the five commissioners were to be thereafter chosen from among the members of Congress.<sup>11</sup>

*Financial Administration.* The matter of finance also engaged the attention of Congress soon after the beginning of the war. It is with respect to this question that the jealousy of executive power seems to have been most marked. Furthermore, the experience of the colonies in this direction, previous to 1775, had been extremely limited. "The financial transactions of the colonial governments had been small in amount, and of a simple and even primitive character. There were in America, therefore, no men skilled in the business of the financier; and it was necessary to commence at the very beginning and gain the experience necessary to the establishment of a sound system of national finance. It is not surprising, therefore, that at the outset Congress was unable to secure an efficient administration."<sup>12</sup>

Two Treasurers of the United Colonies were appointed by Congress on July 29, 1775, to have charge of the funds received from the first issue of bills of credit. At the same time it was recommended that the various colonial assemblies should also choose treasurers, who were to receive and pay out, with the authority of Congress, the quotas due from their respective colonies. Difficulties having arisen in connection with the settlement of certain accounts, a Committee of Accounts was created by Congress on September 25, to "examine and report" on all accounts against the government before payment was made. As the financial transactions of the government continued to increase in importance, Congress was led to the appointment of a standing committee of five members on February 17, 1776, to superintend the conduct of the treasury. The work of this committee consisted of the examina-

<sup>10</sup> Hamilton, *Life of Alexander Hamilton*, I, 375.

<sup>11</sup> Journals of the Continental Congress, XII, 1076. Mr. Guggenheimer interprets the record of the action taken by Congress in this connection as unfavorable to the change. All doubt is removed, however, it would seem, by the appointment on November 4, 1778, of "two members of Congress to attend the Board of War."—*Ibid.*, XII, 1101.

<sup>12</sup> Bullock, *op. cit.*, 190.

tion of the accounts of the treasurers, the employment of proper persons for liquidating the public accounts, the superintendence of the emission of bills of credit, and reporting to Congress from time to time on the state of the treasury.<sup>13</sup>

*Treasury Office of Accounts.* The expanding financial business of the United Colonies soon necessitated a further enlargement of the treasury establishment. A Treasury Office of Accounts was created on April 1, 1776, at the head of which was an auditor general, who was given supervision over the work of clerks and assistants employed to keep the public accounts. This office, however, was placed under the control of the standing congressional Committee on Finance, which was thereafter known as the Treasury Board. The Committee on Accounts, created in September, 1775, was discharged on July 30, 1776, and its work was performed by the Office of Accounts until March 13, 1777, when Congress, on recommendation of the Treasury Board, appointed a new committee consisting of three Commissioners of Claims.<sup>14</sup> Due to the expanding credit operations upon which Congress had entered, provision was made on July 15, 1778, for a Treasurer of Loans, who was charged with certain duties pertaining to the issue of bills of exchange, loan office certificates, and bills of credit. A standing committee of finance was established on August 27, 1778, to consider the state of the national finances and to report thereon to Congress from time to time.<sup>15</sup>

*Reorganization of Financial Administration, 1778.* "Manifestly," says Bullock, "this system of administration was cumbersome and ineffective. Authority was so divided between the five members of the Treasury Board and the Committee on Finance that no responsible and united management could be secured. Moreover, it was impossible for members of Congress to transact properly the business of the Board while attending to their legislative duties."<sup>16</sup> Frequent demands for a more simple and compact system failed to bring any action, although Congress appointed a committee as early as October 17, 1776, to bring in a

<sup>13</sup> Journals of the Continental Congress, II, 221; III, 262; IV, 156.

<sup>14</sup> *Ibid.*, IV, 244; V, 620; VII, 175.

<sup>15</sup> *Ibid.*, XI, 692, 843.

<sup>16</sup> Bullock, *c.p. cit.*, 193.

plan for better regulating the Treasury Board.<sup>17</sup> An entire reorganization of the finance department, effected on September 26, 1778, did inaugurate at least a partial degree of unity in the system. Provision was made for securing a suitable building in which all the officers of the treasury could be brought together, and the following offices were created: a comptroller, an auditor, a treasurer, and six commissioners of accounts. All of these officers were to be annually appointed by Congress; but they, themselves, were given authority to select their own clerks, for whose conduct they were made responsible. The duties of all these officers and the forms of departmental procedure were quite minutely prescribed by this act. The Treasury Office of Accounts was entirely superseded, but the Treasury Board was retained as a general supervisory body and an intermediary between Congress and the new treasury officers.<sup>18</sup>

"This act shows a great advance over the previous methods of financial administration. Not only have the titles of the more important treasury officers been retained to the present day, but the system of checks and balances here instituted is much the same as that now in operation between the different branches of our Treasury Department. Indeed, it would be difficult to improve upon some of the leading features of this treasury establishment. The law of 1789, which established the present department, owed much to this act of 1778 and to the subsequent modifications introduced in 1779 and 1781."<sup>19</sup> Congress was still unconvinced, however, says Sumner, that finance is a matter of executive administration, and that the line between its functions and those which are suitable for a deliberative and enacting body is very distinct. "They still clung to the system of administration by a committee of the legislative body, and they thought that fidelity to the maxims

<sup>17</sup> Journals of the Continental Congress, VI, 886.

<sup>18</sup> *Ibid.*, XII, 956. This act of Congress was largely in accordance with the report of a committee of that body, submitted on August 13, 1778.—*Ibid.*, XI, 779. Samuel Adams, writing to James Warren on November 3, 1778, said: "In order that the affairs of the Treasury may be better attended than they possibly can be by members of Congress, who are obliged to give their attendance in the House, we have established a new Board to consist of a Treasurer, Comptroller, Auditor and two Chambers of Accounts of three each. These officers are all chosen from without doors."—Writings of Samuel Adams (ed. Cushing), IV, 88.

<sup>19</sup> Bullock, *op. cit.*, 194.

of civil liberty required that they should not only lay down rules, but also administer . . . .”<sup>20</sup>

*Board of Treasury.* Another advance step was taken on July 30, 1779, when Congress resolved to abolish the old Treasury Board and to establish a new board to consist of five members, only two of whom should be members of Congress. The commissioners were to be elected annually by Congress. This new Board of Treasury was to have “general superintendence of the finances of the United States, and of all officers entrusted with the receipt and expenditure of the public money . . . .” The office of comptroller was abolished, but the offices of auditor general, treasurer, and the two chambers of accounts were retained. Six additional auditors were appointed for settling accounts and claims arising in the army. The work of the treasury officers was not materially changed, except that appeals from their decisions were now to be taken to the Board of Treasury instead of to Congress.<sup>21</sup>

*Naval Administration.* A similar evolution from the committee system to that of boards and commissions may be observed in the resolutions of Congress providing for the establishment and administration of a navy. A number of the colonies, during the war period, maintained a small naval force of one or two vessels. In some cases, the conduct of naval, as well as military affairs, was entrusted to the councils of safety; in others separate boards were established. Thus in Virginia, naval affairs were at first entrusted to the supervision of the council of safety, but on June 29, 1776, a board of commissioners was organized to “superintend and direct all the naval affairs of the colony.”<sup>22</sup> The president of this board was known as the First Commissioner of the Navy. South Carolina established a similar administrative board a few months later.<sup>23</sup>

*Marine Committee.* The origin of the Continental navy proper is to be found in a resolve of Congress on October 13, 1775, to fit

<sup>20</sup> Sumner, *The financier and the finances of the American revolution*, I, 8 (1892).

<sup>21</sup> *Journals of the Continental Congress*, XIV, 903.

<sup>22</sup> *American Archives* (4th Ser.), VI, 1508.

<sup>23</sup> Mr. Guggenheimer suggests that the modes used by these two colonies was, doubtless, the British Admiralty Board, with the presiding officer patterned after the First Lord of the Admiralty. He characterizes these colonial boards as the nearest approach made in any of the colonies to the later Continental idea of an executive department.—*Op. cit.*, 137-38.

out two armed vessels to intercept transports bringing supplies to the British army. A committee of three was appointed to prepare an estimate of the expense involved. Two weeks later, provision was made for two additional vessels, and the membership of the committee previously appointed to carry into execution the resolutions of Congress was now increased to seven members. This committee soon came to be known as the Naval Committee. On December 11, 1775, a committee of thirteen, one from each colony, was appointed "to devise ways and means for furnishing the colonies with naval armament." Within two days this committee submitted a report calling for the construction of thirteen armed vessels, which was adopted by Congress. A new committee of thirteen was appointed on December 14 to supervise the conduct of naval affairs, which soon overshadowed the less important Naval Committee. The duties of this new committee, which received the name of the Marine Committee, corresponded exactly, for naval affairs, to those of the Board of War in its relation to military matters.<sup>24</sup>

*Navy Board.* Toward the close of 1776 the unsatisfactory state of naval business, together with its increase and growing complexity, forced home upon the committee the necessity of providing some permanent staff to take charge of the details of naval administration. Congress authorized the committee on October 28, 1776, to employ such assistants as were necessary in the conduct of their work. A week later, Congress, at the instance of the committee, resolved "that three persons well skilled in maritime affairs, be immediately appointed to execute the business of the navy, under the direction of the marine committee." These three commissioners became known as the Navy Board and occupied about the same position with respect to the Marine Committee as the Board of War did to the old Board of War and Ordnance.

<sup>24</sup> Journals of the Continental Congress, III, 293, 311, 420, 425, 428, 444; V, 423. Dr. C. O. Paullin, in his work on The Navy of the American Revolution 86 (1906), writes of the Marine Committee as follows: "The committee was a very able one, comprising several of the foremost men of the Revolution . . . Larger, and with its engrossing work of building and fitting out the thirteen frigates, more active than the Naval Committee, it soon overshadowed and finally absorbed its colleague . . . The Marine Committee now acquired a firm grasp of the naval business of the colonies, and from this time until December, 1779, it was the recognized and responsible head of the Naval Department . . . ."

Assistant boards, of equal number and directly responsible to the Marine Committee, were established sometime later for the Eastern and Middle states, located at Boston and Philadelphia, respectively. These assistant boards were charged with the superintendence of all naval and maritime affairs of the United Colonies within their respective groups of states, under the direction of the Marine Committee.<sup>25</sup>

*Board of Admiralty.* The third step in the development of naval administration was similar to that noted in connection with other departments. The Marine Committee had proved slow, cumbrous, inexpert, and irresponsible. "The wiser members of Congress had long seen that it was a prime defect in governmental practice to add to the duties of a legislative committee, those of an executive office; for it threw upon the same men too much work of too diverse kinds, and it removed from the administrative organ its most essential attributes of permanency, technical skill, and responsibility."<sup>26</sup> On June 9, 1779, a committee of three was appointed to prepare a plan for conducting the marine business of the United Colonies. This committee was discharged, however, in October of that year, and the Marine Committee itself was directed to prepare and report such a plan. The report of the committee, which was adopted by Congress on October 28, 1779, provided that "a Board of Admiralty be established, to superintend the naval and marine affairs of these United States; to consist of three commissioners not members of Congress, and two members

<sup>25</sup> Journals of the Continental Congress, VI, 906, 929; VII, 281; XII, 1085.

<sup>26</sup> Paullin, *op. cit.*, 182. John Paul Jones, writing to Robert Morris on October 16, 1776, declared that efficient naval officers could never be obtained until Congress "in their wisdom see proper to appoint a Board of Admiralty competent to determine impartially the respective merits and abilities of their officers, and to superintend, regulate, and point out all the motions and operations of the navy."—American Archives (5th Ser.), II, 1106. Jared Sparks, commenting upon the work of the Marine Committee, says: "It was of course fluctuating, as new members were constantly added, in the place of those who had resigned or retired from Congress. Thus there was neither consistency nor a system of action. Very few of the members had any knowledge of naval concerns. Party views and local interests contributed to divide the counsels of the Board, and to prevent the adoption of efficient and beneficial measures. These facts are enough to account for any irregularities and want of method and energy in that department."—Writings of George Washington (ed. Sparks), VI, 228.

of Congress, any three of whom to form a board for the despatch of business; to be subject in all cases to the control of Congress."<sup>27</sup>

*Conduct of Foreign Relations.* In the conduct of foreign intercourse, the committee system first adopted by Congress was not abandoned in favor of an administrative board or commission, as was the case in the other departments. Even before separation from England was actually determined upon, it was resolved that the Continental Congress should conduct the foreign affairs of the colonies. Article V of Franklin's sketch of "Articles of Confederation," submitted on July 21, 1775, read as follows: "That the power and duty of Congress shall extend to the determining on war and peace, to sending and receiving ambassadors, and entering into alliances [the reconciliation with Great Britain]. . . ." Article XVIII of the "Articles of Confederation and Perpetual Union," prepared by John Dickinson of New Jersey and submitted on July 12, 1776, immediately following the Declaration of Independence, proposed that: "The United States assembled shall have the sole and exclusive right and power of determining on peace and war, . . . sending and receiving ambassadors under any character, entering into treaties and alliances . . . ." This clause appeared as Article IX in the proposed Articles of Confederation bearing date of July 9, 1778, which were finally ratified on March 1, 1781.<sup>28</sup>

*Committee of Secret Correspondence.* The first delegation of authority by Congress with respect to foreign relations to be noted is the appointment of committees on June 3, 1775, to draft a petition to the King and to address letters to the people of Great Britain, Ireland, and Jamaica. On November 29, a committee of five was appointed "for the sole purpose of corresponding with our friends in Great Britain, Ireland, and other parts of the world," and they were required to lay their correspondence before Congress when directed.<sup>29</sup> This committee was given the title of the Committee of Secret Correspondence. Its prototype was the powerful contrivance sponsored by Samuel Adams and known as the Committee of Correspondence, which grew from a purely local body in Massachusetts to a chain binding together all of the colonies, spread-

<sup>27</sup> Journals of the Continental Congress, XIV, 708; XV, 1133, 1217.

<sup>28</sup> *Ibid.*, II, 196; V, 550; XIX, 217.

<sup>29</sup> *Ibid.*, II, 79; III, 392.

ing revolutionary ideas.<sup>30</sup> As many still hoped for reconciliation with the mother country, the adoption of this device by Congress for foreign communication possessed the advantage of being only a committee instead of a foreign office. Silas Deane of Connecticut was the first representative of the committee to be sent abroad. He was entrusted with the work of obtaining arms and ammunition in France for the defense of the colonies, and to ascertain whether, in the event of the colonies coming to a total separation from Great Britain, France would feel disposed to enter into a treaty of friendship and alliance with them.<sup>31</sup> On September 26, 1776, the mission to France was made a commission of three members appointed by Congress. Later it was decided to send commissioners to other European states. Following the Declaration of Independence, the committee threw aside its mask and appeared as the foreign office of the government, although its work was only clerical, all the instructions to commissioners abroad being drawn up by Congress itself, and based upon the reports of special committees.

*Committee of Foreign Affairs.* The title of the committee was changed on April 17, 1777, to the "Committee of Foreign Affairs," but no change was made in its duties. Its chief function seems to have been to furnish the agents of the government abroad with accounts of the course of events in America. Beyond that, it merely acted as an agent to execute the orders of Congress. It did not escape criticism, however, for its correspondence was attended to only with such regularity as the time and inclination of its members admitted. Considerable delay was unavoidable, because of the many other duties the members were called upon to discharge, in their capacity as delegates in Congress.

*Committee of Commerce.* The conduct of the commercial affairs of the United Colonies was also entrusted by Congress to a committee composed of its own members. The Secret Committee, appointed on September 18, 1775, to secure or provide for the manufacture of military supplies, was discharged on July 5, 1777, and its duties were assigned to a new Committee of Commerce to be composed of five members. Three additional members were

<sup>30</sup> Guggenheimer, *op. cit.*, 143.

<sup>31</sup> Cf. the instructions of the committee to Deane, quoted in Revolutionary diplomatic correspondence of the U. S. (ed. Wharton), II, 78 *et seq.*

appointed on December 13 of that year. The work of this committee was no longer concerned merely with the importation of arms and ammunition, but with all articles of commerce which the colonies were obliged to secure from Europe. On December 14, 1778, an entirely new Committee of Commerce was appointed, consisting of five members, any three of whom were empowered to transact business. This committee was charged with the general conduct of "the commercial affairs of the United States."<sup>22</sup>

**Weakness of Administration by Committees and Boards.** The Continental Congress undertook, then, in 1775 and 1776, to carry on the work of government through a system of committees composed of its own members. The impossibility of efficiently conducting its executive and administrative functions in this manner soon forced Congress to concentrate authority with respect to matters of finance, and military and naval affairs in the hands of a number of administrative boards. But the abandonment of the committee system was not accomplished without prolonged discussion in Congress and urgent appeals on the part of men interested in the successful prosecution of the war for independence. On December 16, 1776, Robert Morris, writing to the Committee of Secret Correspondence, said: ". . . If the Congress mean to succeed in this contest, they must pay good executive men to do their business as it ought to be, and not lavish millions away by their own mismanagement. I say mismanagement, because no man living can attend the daily deliberations of Congress and do executive parts of business at the same time." Again, writing to the American Commissioners in France on December 21, 1776, he said: ". . . So long as that respectable body [Congress] persist in the attempt to execute, as well as to deliberate on their business, it never will be done as it ought, and this has been urged many and many a time, by myself and others, but some of them do not like to part with power, or to pay others for doing what they cannot do themselves."<sup>23</sup> John Jay, in a letter to Washington written on April 26, 1779, particularly referred to the misconduct of naval affairs: "While the maritime affairs of the continent continue under the direction of a committee, they will be exposed to all of the

<sup>22</sup> Journals of the Continental Congress, II, 253; VIII, 533; IX, 1023; XII, 1216.

<sup>23</sup> American Archives (5th Ser.), III, 1241, 1336.

consequences of want of system, attention, and knowledge. The marine committee consists of a delegate from each state; it fluctuates, new members constantly coming in and old ones going out; three or four, indeed, have remained in it from the beginning; and few members understand even the state of our naval affairs, or have time or inclination to attend to them.”<sup>34</sup>

Jared Sparks, in his Life of Gouverneur Morris, describes the evils of the committee system as follows: “The manner of transacting the various forms of government in Congress by committees, adopted at first from necessity, and continued because it was difficult afterwards to effect a change, became at length so complicated and perplexing, as to demand serious attention and a speedy remedy. Congress exercised at the same time legislative and executive powers; they passed resolves in their capacity of representatives, and executed them by committees chosen from their own numbers. . . . The committees were in a measure irresponsible bodies; much was left undone, and more was done imperfectly. . . . These evils were early perceived by Congress, and they grew more and more apparent daily. Much time was expended in discussing a new arrangement, but the workings of party spirit, the interested views of some members, the doubts, and fears, and divided opinions of others, caused delays injurious to the public welfare.”<sup>35</sup>

The first change in the administrative system to be undertaken by Congress was the establishment of boards or commissions, which came to be looked upon as the heads of their respective departments, although the various congressional committees were often retained in a sort of advisory or superintending capacity. The first boards to be established, namely, the Board of War and Ordnance and the Treasury Board, were in essence merely committees of Congress, although the extent of their powers was somewhat greater than Congress had previously granted to its committees. All the members of these two boards were selected from among the delegates in Congress. The next change to be noted is in the composition of the Navy Board, established in 1776, and the Board of War, created in 1777. Both of these boards were composed of three commissioners not members of Congress, and they carried on their work under the direction of the Marine Committee and the

<sup>34</sup> Correspondence and public papers of John Jay (ed. Johnston), I, 209.

<sup>35</sup> Sparks, Life of Gouverneur Morris, I, 227.

Board of War and Ordnance respectively. The membership of the Board of War was increased to five soon after it was established. The third change that took place was the creation of administrative boards composed jointly of members in Congress and members outside of Congress. The Board of War was the first to undergo this revision in its membership, three of its number being chosen from without the membership of Congress and the other two being selected from that body. This division was adopted in the composition of the Treasury Board, established in 1779, and also for the Board of Admiralty, appointed the same year. Only in the case of the foreign office was the committee system continued throughout the period from 1775 to 1780.

The extent to which Congress was influenced, in its adoption of a system of administrative boards, by the knowledge of its members concerning existing administrative organization in European countries, is difficult to determine. Mr. Guggenheimer observes that while the various departments of government, as first administered by committees, were all characterized by the absence of any exotic elements, only in the case of the foreign office was this native purity maintained throughout. That the War, Treasury, and Navy departments yielded, at least in some degree, to the attacks of foreign influences, is evidenced not only in their forms of organization, but also in the titles applied to them. It is quite certain, for example, that the two chambers of accounts in the finance department, established in 1778, were fashioned after the French *Chambres des Comptes*; and it is even more probable that the office of Comptroller was modeled after the *Controleur-General* of France, since the English Comptroller-General is of subsequent date. "It is to the British influence, however," says Guggenheimer, "that the adoption of the system of board management may unhesitatingly be ascribed. . . . There can be no question that the general conception of the Board of War, the Admiralty Board, and the several Treasury Boards, was determined by the forms of the corresponding contemporary English bodies."<sup>28</sup>

The most outstanding feature of administrative organization, under the Continental Congress, was the total absence of any element of permanency. The membership and policies of the various administrative committees and boards were constantly

<sup>28</sup> Guggenheimer, *op. cit.*, 147.

changing. Congress, despite constant suggestions and recommendations of a system of single executive officers, jealously guarded the limited executive prerogatives vested in it, and shrank from entrusting them to individuals who might therewith set themselves up as an independent power.”<sup>37</sup> It was only after a prolonged struggle, and when the combined influence of revolutionary statesmen both in and out of Congress had been brought to bear, that a change was accomplished.

**Establishment of Single-Headed Administrative Departments.** Early in 1779, Congress instructed the representatives of the United States in Europe to obtain copies of the arrangements and forms of conducting the business of the treasury, war, and marine departments, and other offices of government in France, Great Britain, and other kingdoms or republics to which they were respectively accredited; such copies to be forwarded as soon as possible to Congress. It was not until August 29, 1780, however, that Congress took any definite steps looking toward an improved system of administration. On that date, a committee of five was appointed to report a plan for the revision and rearrangement of the civil executive departments of the United States.<sup>38</sup>

There were two schools of thought among Revolutionary leaders, says Wharton, in his work on the Revolutionary Diplomatic Correspondence of the United States. The first of these he calls the “liberative” or “expulsive” school, whose sole object was to get rid of British authority, and which, from abhorrence of the British executive, had come to regard all executive authority as tyranny. This school sought to work executive government through congressional committees. The second he designates as the “constructive” or “remedial” school, whose members sought to set up a constitutional system of coördinate legislative, executive, and judicial departments, in the place of the British government, which its members united with their associate statesmen in the determination to strike down. This second school sought to work executive government through the heads of departments, giving, however, large powers to Washington as commander-in-chief, and to Franklin as

<sup>37</sup> *Ibid.*, 149.

<sup>38</sup> Journals of the Continental Congress, XIII, 114; XVII, 791.

head of the legation at Paris, by whom so much of the political affairs of the Union were controlled.<sup>29</sup>

Samuel Adams was the recognized leader of the first school of thought, vigorously opposing any measures looking toward the concentration of authority in the hands of executive officers. Wharton says of him: "He was the representative of puritanism in its highest and yet in its most impracticable type; of that type which subordinates in all respects public conscience to individual conscience; which produces great heroes of revolt, but which cannot produce great organizers of administration. . . . During the Revolution, through his [Adams] dislike of executive authority in any shape, and through his opposition to the adoption of scientific principles either in war, in diplomacy, or in finance, he came more than once near wrecking the cause which he would gladly have given his life to sustain."<sup>30</sup> He was ably supported in this opposition to executive control by Richard Henry Lee and by John Adams during the period of the war.

M. de la Luzerne, a representative of the French Government in the United States, wrote to Count de Vergennes on March 25, 1781, as follows: "Divisions prevail in Congress about the new mode of transacting business by secretaries of different departments. Samuel Adams, whose obstinate and resolute character was so useful to the revolution in its origin, but who shows himself very ill suited to the conduct of affairs in an organized government, has placed himself at the head of the advocates for the old system of committees of Congress, instead of relying on ministers, or secretaries, according to the new arrangement."<sup>31</sup> Mr. Wells, in his work on *The Life and Public Services of Samuel Adams*, thus explains the attitude of Adams on this question: ". . . He considered it the safest way, at least for the present, that the general duties should be performed by the old and tried system of standing committees—a system which thus far had been found to work harmoniously, and, as it gave opportunity for the joint deliberation of several members upon any subject, was more in consonance with his conceptions of democracy than government by the separate acts of special departments having a single head. A jealousy of

<sup>29</sup> Wharton, *op. cit.*, I, 252.

<sup>30</sup> *Ibid.*, I, 253.

<sup>31</sup> *Writings of George Washington* (ed. Sparks), VII, 400n.

delegated power in any form was a characteristic of Samuel Adams, and certainly his experience taught him that such jealousy was a political virtue.”<sup>42</sup>

Alexander Hamilton was the most outspoken advocate of a system of single-headed administrative departments, and may be regarded as the leader of what Wharton terms the “constructive” school of thought. Writing to Robert Morris early in the year 1780, Hamilton expressed his preference for single ministers of war, foreign affairs, finance, and marine, as follows: “Congress have too long neglected to organize a good scheme of administration, and throw public business into proper executive departments. For Commerce, I prefer a Board; but for most other things, single men. We want a Minister of War, a Minister of Foreign Affairs, a Minister of Finance, and a Minister of Marine. There is always more decision, more dispatch, more secrecy, more responsibility, where single men, than where bodies are concerned. By a plan of this kind, we should blend the advantages of a Monarchy and of a Republic, in a happy and beneficial union. Men will only devote their lives and attentions to the mastering a profession, on which they can build reputation and consequence which they do not share with others.”<sup>43</sup>

In a letter to James Duane on September 3, 1780, Hamilton wrote at considerable length in pointing out the advantages of the system of single-headed executive departments. “Congress,” he said, “have kept the power too much in their own hands, and have meddled too much with details of every sort. Congress is, properly, a deliberative corps; and it forgets itself when it attempts to play the executive. . . . The variety of business must distract; and the proneness of every assembly to debate, must at all times delay.” The appointment of administrative boards was also a bad plan, in Hamilton’s opinion, as boards “partake of a part of the inconveniences of larger assemblies. Their decisions are slower, their energy less, their responsibility more diffused. They will not have the same abilities and knowledge as an administration by single men.” Hamilton met the objection that competent individuals could not be found to undertake these offices, by recommending several for the particular departments and emphasizing the fact

<sup>42</sup> Wells, *Life and public services of Samuel Adams*, III, 130.

<sup>43</sup> Works of Alexander Hamilton (ed. Hamilton), I, 127.

that if Congress made of these offices positions of real trust and importance, there would be then everything to excite the ambition of candidates. He contended that such an innovation would not lessen the importance of Congress, but on the contrary would leave that body with the same rights and powers as heretofore, happily disengaged of detail. That Hamilton was aware of the administrative systems of Europe and sought to pattern after them is evidenced in his proposal to give to the heads of departments "the same powers and functions as those in France analogous to them." Concluding, he said: "In my opinion, a plan of this kind would be of inconceivable utility to our affairs; its benefits would be very speedily felt. It would give new life and energy to the operations of Government. Business would be conducted with dispatch, method, and system. A million of abuses, now existing, would be corrected; and judicious plans would be formed and executed for the public good." After Congress had taken favorable action in this direction, Hamilton wrote to Robert Morris on April 30, 1781, as follows: "I was among the first who were convinced that an administration, by single men, was essential to the proper management of the affairs of this country. I am persuaded, now, it is the only resource we have, to extricate ourselves from the distresses which threaten the subversion of our cause."<sup>44</sup>

Washington also voiced his opposition to the system of committees and boards and urged upon Congress the necessity of establishing executive departments in charge of a single officer. In a letter to James Duane on December 20, 1780, he said: "If Congress suppose that boards composed of their body, and always fluctuating, are competent to the great business of war (which requires not only close application but a constant and uniform train of thinking and acting) they will most assuredly deceive themselves. Many, many instances might be deduced in proof of this, but to a mind so observant as yours there is no need to enumerate them." Duane, in a letter written to Washington on January 29, 1781, said: "There are some political regulations of great importance, which I have exceedingly at heart, and which are drawn near to a conclusion. The principal measures to which I allude are the establishment of executives or ministers in the departments of

<sup>44</sup> *Ibid.*, I, 154-59, 223.

finances, war, the marine, and foreign affairs; the accomplishment of the confederation; the procuring to Congress an augmentation of power, and permanent revenues for carrying on the war."<sup>45</sup> Mr. Learned, in his work on *The President's Cabinet*, says: "There can be no doubt that the principle of holding one man responsible for the great administrative tasks was approved by most of the more liberal and constructive statesmen, such men, for example, as Jay, Washington, the two Morrises, and Alexander Hamilton."<sup>46</sup>

*Department of Foreign Affairs.* Returning to a description of actual events as they took place from time to time, we find that the first important change made by Congress was in the conduct of foreign affairs, which, unlike the war, finance, and marine departments, had continued in charge of a committee of Congress. Pressure put upon Congress by prominent persons outside that body and, in particular, by our diplomatic representatives abroad, who complained to Congress of the committee's tardy work, led Congress to appoint a committee of three on May 15, 1780, to "take into consideration and report a proper arrangement for the department of foreign affairs." This committee submitted its report on June 12, 1780, but it was not considered until December 15 of that year, and was not finally acted upon until January 10, 1781.<sup>47</sup>

The report of the committee, as adopted, read, in part, as follows: ". . . The committee are of opinion, that a fixed and permanent office for the Department of Foreign Affairs ought forthwith to be established, as a remedy against the fluctuation, the delay and indecision to which the present mode of managing our foreign affairs must be exposed; Whereupon, Resolved: That an office be forthwith established for the department of foreign affairs, to be kept always in the place where Congress shall reside.

<sup>45</sup> Quoted in Bancroft, *History of the formation of the constitution*, I, 283 (1882).

<sup>46</sup> Learned, *The president's cabinet*, 53. At a convention of delegates from several of the New England States, which met in Boston on August 3-9, 1780, a resolution was passed recommending the adoption of "a permanent system for the several departments." Cf. *Massachusetts Historical Collections* (7th Ser.), vol. III (*Trumbull Papers*, Pt. IV), 92.

<sup>47</sup> *Journals of the Continental Congress*, XVII, 428, 505; XVIII, 1156; XIX, 43.

That there shall be a secretary for the despatch of business of the said office, to be styled 'Secretary for foreign affairs' . . . . The said secretary shall have liberty to attend Congress, that he may be better informed of the affairs of the United States, and have an opportunity of explaining his reports respecting his department . . . ." As the report was first drawn up by the committee, the following clause was included: "That your committee are further of opinion that the most effectual mode of conducting the business of the Department for foreign affairs would be through a Minister vested with confidential powers after the example of other nations, responsible for his trust and under the immediate direction of Congress." Realizing, however, the serious obstacles confronting the introduction of such a plan, and the urgent need for immediate action, this part of the report was struck out by the committee. The following clause of the report, as submitted, was negative by Congress: "That a committee of Congress consisting of three members, of whom the President shall always be one, shall have the superintendence and direction of the Department for foreign affairs, and that the Secretary for foreign affairs shall be subject to their instructions and submit all his correspondence and proceedings to their inspection."<sup>48</sup>

After a delay of seven months, Robert Livingston of New York was appointed by Congress to the new office of Secretary for Foreign Affairs.<sup>49</sup> It was his immediate task to organize the new department and to introduce system into the conduct of its business; but the activities of his department were ill-defined, and Congress continued the custom of appointing special committees to consider important diplomatic communications. On January 25, 1782, Livingston, in a letter addressed to the President of Congress, set forth the difficulties surrounding the administration of his office. Upon receipt of this letter, Congress appointed a committee to confer with Livingston. This committee, after making a study of

<sup>48</sup> *Ibid.*, XIX, 44. The Journals of Congress contain merely a record of the proceedings of that body. The only available record of the debates in Congress is that contained in the diary of James Madison. Although taking his seat in Congress on March 20, 1780, Madison did not commence his record of the debates therein until November 4, 1782. Consequently the debates in connection with the establishment of single-headed administrative departments in 1781 are not available.

<sup>49</sup> *Ibid.*, XXI, 851.

the organization and work of the department, submitted a report on February 21, 1782.<sup>50</sup> In accordance with this report, Congress passed a resolution on the following day which partially met the objections of Livingston, and defined and greatly enlarged his powers.<sup>51</sup> He was authorized to proceed independently with diplomatic correspondence, on condition that letters pertaining to "great national subjects" be submitted to Congress for its approbation. He was given permission to attend Congress at all times, to give information with respect to his department, and to explain and answer objections to his reports, when under consideration, upon request of a member and in the absence of any objection. He was also authorized to appoint a secretary and one or, if necessary, more clerks to assist him in the business of his office. Following the passage of this resolution, all communications from our ministers abroad regularly came to the secretary, were submitted by him to Congress, and replies sent through his office. The secretary also became a medium of communication between the states whenever any misunderstanding arose between them. His salary was fixed at \$4000 per annum, and the exact title given him was Secretary to the United States of America, for the Department of Foreign Affairs.

That Congress, in setting up executive departments in charge of a secretary, did not intend to relinquish its practice of close supervision over the work intrusted to them, is clearly evidenced by the passage of a resolution on June 17, 1782, whereby, since it was deemed expedient "as well for the justification of such of the principals of the civil departments immediately under Congress, who duly administer the same, as for the more certain detection of such as may violate in any manner the important trusts consigned to them, that periodical and exact inquiries into their respective administrations be instituted." Congress determined to appoint, on the first Mondays of July and January each year, five committees of five members each, who should be charged with the making of a full inquiry into the proceedings of each one of the five departments, namely, foreign affairs, finance, war, marine, and the postoffice, and report thereon to that body.<sup>52</sup>

<sup>50</sup> Hunt, *The department of state*, 18, 21 (1914).

<sup>51</sup> *Journals of the Continental Congress*, XXII, 87.

<sup>52</sup> *Ibid.*, 334.

The committee appointed in accordance with the above resolutions to inquire into the Department of Foreign Affairs, submitted its report on September 18, 1782. After reviewing the detailed work of the department, the committee said: "Upon the whole the committee report that the business of this department appears to have been conducted with much industry, attention, and utility, and without any errors or defects worthy of being taken notice of to Congress." In spite of this favorable report, however, Livingston tendered his resignation to Congress on December 2, 1782. His resignation was accepted on December 3, and December 19 was designated as the date for choosing his successor. Congress accepted his proposal to continue in office until a person should be appointed to succeed him.<sup>53</sup>

The reason publicly announced by Secretary Livingston for giving up his office was a purely financial one. He had been offered the more lucrative post of Chancellor of the State of New York, whereas his expenses as Secretary for Foreign Affairs exceeded his salary by \$3000 per annum. Other reasons, it is evident, also influenced his decision. Madison, writing to Monroe on March 21, 1785, said: "The practice of Congress . . . was never fixed, and frequently improper, and I always suspected that his [Livingston's] indifference to the place resulted, in part at least, from the mortifications to which this unsteadiness subjected him."<sup>54</sup>

A committee appointed at the time of Livingston's resignation to confer with him on the work of his department, reported on December 21 that he was willing, if Congress so desired, to remain in the department until the ensuing spring.<sup>55</sup> Congress readily took advantage of this offer, and accordingly postponed the date for the selection of his successor. Efforts to secure a suitable person for this important office resulting in failure, another committee was appointed to confer with Livingston with respect to his remaining in office. In a letter to the committee written on May 9, 1783, Livingston again emphasized the financial difficulties which made it impossible for him to continue in the position.<sup>56</sup> He continued to serve, however, until June 4. From that date until John

<sup>53</sup> *Ibid.*, XXIII, 586, 759.

<sup>54</sup> Writings of James Madison (ed. Hunt), II, 128.

<sup>55</sup> Journals of the Continental Congress, XXIII, 823.

<sup>56</sup> Hunt, *op. cit.*, 34-36.

Jay, his successor, entered upon the duties of the office on September 21, 1784, the position of Secretary for Foreign Affairs was practically vacant. Livingston wrote to Madison on July 19, 1783, that he was willing to resume the direction of the department until the ratification of a treaty with Great Britain, but this suggestion was never acted upon by Congress.<sup>57</sup>

On the day that Livingston retired from office, Congress, upon motion of Hamilton, resolved unanimously: "That the thanks of Congress be presented to Mr. Livingston for his services during his continuance in office, and that he be assured Congress entertains a high sense of the ability, zeal and fidelity, with which he hath discharged the important trust reposed in him."<sup>58</sup> Jared Sparks says of him: "He remained at the head of the Department till the war was over, a position novel in its character and difficult in its complicated relations, but sustained in a manner that reflects equal honor upon his patriotism and discretion, his discernment as a statesman, and his integrity as a faithful and efficient officer;"<sup>59</sup> while Francis Wharton declares that, "as secretary of foreign affairs in 1781-1783, he [Livingston] did more than any one in the home government in shaping its foreign policy."<sup>60</sup> After Livingston's retirement, the records of his office were turned over to the Secretary of Congress. As no agreement could be reached with respect to the selection of a new secretary, Mr. Henry Remsen was elected as under secretary on March 2, 1784, and placed in charge of the department.<sup>61</sup> Congress, however, again assumed actual control over the conduct of foreign relations, basing its action upon the reports of special committees.

John Jay, who had just returned to America after serving for five years in a diplomatic capacity abroad, was elected as Secretary for Foreign Affairs on May 7, 1784, but did not assume office until September 21.<sup>62</sup> Because of his service abroad, he was in many ways admirably suited for the position, and from the time he took charge, the foreign office began to "assume the prominence

<sup>57</sup> Writings of James Madison, I, 274n.

<sup>58</sup> Quoted in Hunt, *op. cit.*, 39.

<sup>59</sup> Sparks, *op. cit.*, I, 231.

<sup>60</sup> Wharton, *op. cit.*, I, 596.

<sup>61</sup> Journals of Congress (pub. Folwell), IX, 51.

<sup>62</sup> *Ibid.*, 146.

which subsequently made it the first of the departments.”<sup>63</sup> Jay insisted that Congress surround the office with proper dignity, and he made frequent use of his privilege to appear on the floor of Congress. On January 23, 1785, he addressed a letter to the President of Congress in which he said: “I have some reason, Sir, to apprehend that I have come into the office of Secretary for Foreign Affairs with ideas of its duties and rights somewhat different from those which seem to be entertained by Congress.” In compliance with his request for instructions, Congress, in a resolution passed on February 11, 1785, defined the duties of the department. It was ordered that “all communications to as well as from the United States in Congress assembled on the subject of foreign affairs, be made through the Secretary for the Department of Foreign Affairs; and that all letters, memorials or other papers on the subject of foreign affairs, for the United States in Congress assembled, be addressed to him.”<sup>64</sup>

Madison, in a letter written to Monroe on March 21, 1785, had the following to say with respect to the powers of the Secretary for Foreign Affairs: “If the office of foreign affairs be a proper one and properly filled, a reference of all foreign despatches to it in the first instance, is so obvious a course, that any other disposition of them by Congress seems to condemn their own establishment, to affront the minister in office, and to put on him a label of caution against that respect and confidence of the ministers of foreign powers, which are essential to his usefulness. I have always conceived the several ministerial departments of Congress, to be provisions for aiding their councils as well as executing their resolutions, and that consequently whilst they retain the right of rejecting the advice which may come from either of them, they ought not to renounce the opportunity of making use of it.”<sup>65</sup>

The increasing political importance of the Secretary for Foreign Affairs, after Jay was chosen for that office, is indicated in a letter written by Otto, French *chargé d'affaires*, to Count Vergennes on December 25, 1785, in which he said: “Mr. Jay especially has acquired a peculiar ascendancy over the members of Congress. All important business passes through his hands.” Writing again

<sup>63</sup> Guggenheimer, *op. cit.*, 164.

<sup>64</sup> Quoted in Hunt, *op. cit.*, 44.

<sup>65</sup> Writings of James Madison, II, 127-28.

on January 10, 1786, Otto said: "Congress seems to me to be guided only by his directions . . . Congress . . . does not perceive that it ceases to be anything more than the organ of its chief minister. . . . He inspires the majority of the resolutions of Congress."<sup>66</sup>

Jay continued as Secretary of Foreign Affairs until his appointment as Chief Justice of the Supreme Court under the new Constitution. The two men who were selected by Congress to direct the work of the foreign office both showed conspicuous ability, and it is doubtful if men better equipped for this important post could have been found in America. "When the Department of Foreign Affairs was created," says Gaillard Hunt, "real power was withheld from it, but the very necessities of government gave it more authority from time to time, until it came to have a fair resemblance to a real foreign office, and made the establishment of one under the Constitution a natural graduation."<sup>67</sup>

*Organization of Additional Departments.* Less than a month intervened between the establishment by Congress of a Department for Foreign Affairs and the creation of similar departments of War, Finance, and the Marine. The work of these three offices had been subjected to severe criticism, especially during the year 1780. A committee appointed to investigate a charge that serious delays had resulted in the work of the Treasury Board, returned a severe indictment against the members of the board in its report submitted on August 25, 1780.<sup>68</sup> The committee found that the orders of the commissioners had often been incorrect, and sometimes unintelligible and impracticable, and declared that the reprehensible and disgusting conduct of some of the members of the board had destroyed all friendly communication of counsels and harmony in the execution of public affairs. They proposed the discharge of two of the commissioners and the secretary of the board. Dr. Paullin says of the Admiralty Board: "From the first the Board of Admiralty was more dependent on Congress than the Marine Committee had been. Congress, always jealous of its prerogatives, naturally permitted a freer exercise of power to a committee of its own members, than to a mixed board, whose work

<sup>66</sup> Quoted in Bancroft, History of the formation of the constitution, I, 474. 479.

<sup>67</sup> Hunt, *op. cit.*, 53.

<sup>68</sup> Journals of the Continental Congress, XVII, 779.

was almost entirely that of commissioners selected outside the membership of Congress. To the Board's dependence on Congress for its organization was added that for means to carry out its naval program. The frequency with which it went to Congress asking for quorums and money indicates its helplessness and weakness."<sup>69</sup> Similar defects existed in the conduct of military affairs through the Board of War.

The committee of five appointed by Congress on August 29, 1780, to report a plan for a new arrangement of the civil executive departments,<sup>70</sup> delivered its report on January 13, 1781. The committee recommended the appointment of a Superintendent of Finance, a Secretary at War, and a Secretary of Marine, and prescribed the general scope of their respective powers and duties. So much of the report as related to the Marine Department was ordered recommitted on February 6. The committee delivered in another report on the following day, covering the subject of marine affairs, which was adopted together with the remainder of the report as originally drafted. In substance, the Superintendent of Finance, the Secretary at War, and the Secretary of Marine were charged with complete supervision and control over the affairs of their respective departments, and were empowered to execute the resolves of Congress, with regard to finance, naval and military affairs. Each of these officers was directed to report to Congress the officers necessary to assist in the business of their departments. The salaries of these three officers were fixed on February 9; that of the Superintendent of Finance to be \$6000 per annum, and those of the Secretary at War and the Secretary of Marine to be \$5000 per annum. February 12 was assigned for the election of these officers.<sup>71</sup>

<sup>69</sup> Paullin, *op. cit.*, 194.

<sup>70</sup> *Supra*, 51.

<sup>71</sup> Journals of the Continental Congress, XIX, 57, 123-24, 125-28, 133. That part of the committee report ordered recommitted read as follows: "That the Secretary of Marine be empowered and required to execute and discharge all the duties committed by Congress to the Board of Admiralty; that the several Navy Boards be abolished and the duties heretofore exercised by them be committed to such agents, not exceeding one in each Port, as shall be recommended by the Secretary of Marine and appointed by Congress. That he also report to Congress the officers necessary for assisting him in the duties of his Department." The changes to be noted in the report of the committee as it was submitted for the second time are: (1) The absence of any provision for the abolition of the various Navy

*Superintendent of Finance.* Difficulty was encountered in the selection of suitable persons for these important positions. The first to be filled was the office of Superintendent of Finance, when Robert Morris was unanimously chosen on February 20, 1781, to take charge of that department. The unfavorable condition of the Treasury Department, under the control of the Treasury Board, has already been pointed out. Bullock, commenting upon the establishment of the board in 1779, says: "This act was no real improvement over that of the previous year, and was nothing more than an attempt of Congress to secure an efficient administration without going to the length of placing the control of the treasury in the hands of a single man . . . . Manifestly unity and responsibility were as conspicuously lacking as in former systems . . . . The members of the board were often incompetent, their methods of conducting business were lax and roundabout, accounts were loosely kept, and the government was imposed upon in all directions . . . . In both methods and objects of expenditure the public moneys were oftentimes squandered. There was found everywhere the widespread corruption that so often attends the purchase of army supplies. Moreover, the expenditures were oftentimes conducted on a most extravagant scale; and this, too, in spite of the efforts made by Congress for retrenchment and reform . . . . Finally, the business of the Board of Treasury was conducted with a slowness which precluded the possibility of an efficient administration."<sup>72</sup>

In addition to the outspoken advocacy of the adoption of a system of single-headed executive departments on the part of such men as Hamilton, Jay, and Morris, the extreme necessity of placing the control of the finances in the hands of a single competent person was clearly and effectively emphasized by Pelatiah Webster. In an essay entitled Free Trade and Finance, written on February 10, 1780, Webster said: "The forming of a system of finance is an arduous work, fully equal to the abilities of a

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Boards; and (2) a more detailed analysis of the work of the Secretary of Marine, similar to the paragraphs outlining the work of the Superintendent of Finance and the Secretary at War. It is significant to note that the salaries of these officers exceeded that of the Secretary for Foreign Affairs, which was fixed at \$4000 per annum.

<sup>72</sup> Bullock, *op. cit.*, 195-98.

person of the strongest intellect, steady attention, and aptitude to the subject. It must be the work of *one mind*, capable of the necessary attention to all the parts, and able so to comprehend and arrange the whole, as to form a system both practicable and sufficient. I do not think any aggregate body of men on earth able to do this . . . . The abilities requisite to form and execute such a system are not to be found or expected in any senatorial body; *i. e.*, by common probability it cannot be presumed, that the component members of such a body should be possessed of the rare and peculiar abilities requisite for this great purpose. It remains then a matter of the highest and most urgent necessity, that a suitable person for the great office of Financier-General, or Superintendent of Finance, should be looked up, and appointed as soon as may be, whose sole business should be to inspect and control our whole revenue and expenditures, and keep them in balance with each other." In a later essay, entitled *A Dissertation on the Nature, Authority, and Uses of the Office of a Financier-General or Superintendent of Finances*, written on January 24, 1781, Webster said: "In all aggregate bodies, where many men make up a board, they can throw off the blame of any mismanagement from one to another, and so forth, which cannot be the case when the trust is committed to a single person. Besides from the nature and duty, the design and uses of this office, it appears most plain and evident, that it must be the work of *one mind*."<sup>73</sup>

In spite of the convincing arguments put forward in favor of the appointment of one competent person to take charge of the finances, reform in the finance department met with more opposition than in any of the others. The office of the Treasury was considered by far the most important of all, and "it was only with many qualms that certain Congressmen agreed to place the finances of the country under the management of one man."<sup>74</sup> Samuel Adams, who was a zealous opponent of the measure, gave

<sup>73</sup> Webster, Political essays, 88-90, 170 (1791). Pelatiah Webster, a merchant of Philadelphia and a close observer of the course of events in Congress, was attracted to a study of financial administration, according to his own statement, because of the vital relationship between the subject of finance and the success of the struggle for independence. He states that the first thirty years of his life were spent in literary pursuits, and that he entered business more as a matter of necessity than of inclination.

<sup>74</sup> Guggenheimer, *op. cit.*, 154.

the reasons for his opposition in a letter to Elbridge Gerry, written on September 9, 1783, following the proclamation of peace with Great Britain: "Were our financier, I was going to say, even an angel from heaven, I hope he will never have so much influence as to gain the ascendancy over Congress which the first Lord of the Treasury has long had over the Parliament of Britain,—long enough to effect the ruin of that nation. These are the fears which I expressed in Congress when the department was first instituted. I was told that the breath of Congress could annihilate the financier; but I replied that the time might come, and, if they were not careful, it certainly would, when even Congress would not dare to blow that breath."<sup>75</sup>

That Congress appreciated the need for expert advice in the matter of finance, even prior to the appointment of a Superintendent of Finance, is indicated in the instructions of that body to the United States commissioners in France in 1778, directing them to inform Dr. Price, a well-known English financier and sympathizer with the colonies in their struggle for independence, that they desired to consider him as a citizen of the United States and to have his aid in regulating their finances.<sup>76</sup> Dr. Price declined, however, to accept this invitation. Once Congress had determined to appoint a Superintendent of Finance, it did not, as in the case of the Secretary for Foreign Affairs, reserve for itself rights which might have tended to interfere with the Superintendent in the execution of his trust. The choice of Robert Morris for that office by Congress met with universal approval. ". . . Whatever may have been thought, in regard to the candidates suitable for the other departments, there was but one opinion in Congress and in the nation, as to the proper person for taking charge of the finances, then in a dilapidated and most deplorable condition. The public sentiment everywhere pointed to Robert Morris, whose great experience and success as a merchant, his ardor in the cause of American liberty, his firmness of character, fertility of mental resources, and profound knowledge of pecuniary operations, qualified him in a degree far beyond any other person for this arduous and responsible station."<sup>77</sup> It was with some degree of hesitancy,

<sup>75</sup> Wells, *op. cit.*, III, 130.

<sup>76</sup> Secret Journals of Congress, II, 101.

<sup>77</sup> Sparks, *op. cit.*, I, 231.

however, that Morris accepted the appointment. In a letter written to Franklin on July 13, 1781, he said: "The unanimous appointment to the superintendency of our finances, with which Congress has honored me, and my conviction of the necessity that some *one* person should endeavor to introduce method and economy into the administration of affairs, have induced me, though with reluctance, to accept that office."<sup>78</sup>

A committee of Congress, appointed to consider a letter from Morris written on March 13, 1781, submitted its report on March 29, in which they recommended that the Superintendent of Finance be given power to remove all persons entrusted with and immediately employed in the expenditure of the public money, who were found to be incapable, negligent, or dishonest, and also all such as were, or should be, in his judgment, unnecessary, on condition that such power be limited to the duration of the war and that the reasons for such removals be reported to Congress. The report of the committee, however, was negatived on March 31, upon motion of Samuel Adams. It was ordered on April 20 that the report of this committee be re-committed. The committee submitted another report on the following day, which denied to the Superintendent the power to remove persons immediately appointed by Congress, although authorizing him to suspend persons from office so appointed, provided that he report to Congress their names and the reasons for their suspension. The report of the committee in this modified form was agreed to by Congress. An additional report of this committee, submitted on April 26 and approved the following day, authorized the Superintendent, in order that he might devote his time and attention to the more important duties of his office, to appoint such person or persons as he deemed proper to prosecute or defend for him, in his official capacity, or on behalf of the United States. The form of the commission to the Superintendent of Finance and of the oath of office to be taken by him were set forth in this report. Morris' letter of acceptance, written by him to Congress, was received on May 14, 1781.<sup>79</sup>

*Reorganization of Department of Finance.* The first efforts of the new Superintendent to substitute order for chaos in the finances

<sup>78</sup> Works of Benjamin Franklin (ed. Bigelow), VII, 270.

<sup>79</sup> Journals of the Continental Congress, XIX, 326, 338, 429, 432; XX, 449, 455, 499.

of the Confederation met with a most hearty response. His recommendation for the establishment of a national bank was approved by Congress on May 26, 1781. At his request, Congress authorized on July 6, 1781, the appointment of an assistant and two clerks by the Superintendent to aid in the work of the department. Congress authorized him, or his appointees, by a resolution approved on July 10, to procure on contract all necessary supplies for the army and navy and to provide for the transportation thereof, such contracts to be binding on the United States. The office of Treasurer of Loans was abolished on July 23, and the duties of that office transferred to the office of the Treasurer. At the request of the Superintendent, the Board of the Treasury was ordered, by resolution of July 24, to continue in the discharge of its duties until the business of the board could be regularly transferred to the Superintendent of Finance. On September 11, 1781, an ordinance for regulating the treasury and adjusting the public accounts was passed. By this act, the office of the commissioners of the treasury [the Treasury Board], chambers of accounts, auditor general, auditors and extra commissioners of accounts were abolished, and the following offices were created; namely, a comptroller, a treasurer, a register, auditors and clerks. The appointment of these officers was left to Congress, except for the clerks who were to be chosen by the comptroller. The number of auditors and clerks to be appointed was left to the determination of the Superintendent. The duties and compensation of these officers were prescribed in the act. The Superintendent was also authorized to appoint a secretary in his office. By a resolution approved on November 27, 1781, the Superintendent was authorized and directed to take under his care and management all loans or other moneys obtained in Europe or elsewhere for the use of the United States, subject to the appropriation of Congress.<sup>80</sup>

The rapid extension of the sphere of authority possessed by the Superintendent manifests in an unmistakable fashion the confidence of Congress in the ability of Morris, and a sincere desire to coöperate with him in the conduct of the national finances. "The administration of Morris," says Bullock, "marks a new era in the financial history of this period. His business experience, supplemented by the training that he had received while chairman of the

<sup>80</sup> *Ibid.*, XX, 545, 724, 734; XXI, 783, 784, 948-51, 1142.

Standing Committee of Finance, had admirably qualified him for the position of Superintendent. Moreover, his wide reputation and recognized ability enabled him to secure a large degree of independence in the execution of the powers entrusted to him.”<sup>81</sup>

But the vigorous administration of the Superintendent, involving the establishment of a system of taxation to produce adequate revenues, aroused bitter opposition in many of the states. This local opposition and general apathy toward financial reform had its effect upon sentiment in Congress, and that body gradually withdrew its encouragement and active support. The members of Congress dared not openly defy the instructions from their states by voting for the measures proposed. Confronted with failure in his plans for a permanent domestic revenue and recognizing that he no longer could command the full support of Congress, Morris resigned on January 24, 1783.<sup>82</sup> In his letter of resignation he said: “To increase our debts while the prospect of paying them diminishes, does not consist with my idea of integrity. I must therefore quit a situation which becomes utterly unsupportable.”<sup>83</sup>

Congress, realizing the serious condition of the finances, appointed a committee to confer with Morris respecting his continuance in office until other arrangements could be effected. The committee reported on April 28 that the substance of their conference with Morris was as follows: “That his continuance in office was highly injurious to his private affairs and contrary to his private inclinations.” He offered to remain in office, however, until arrangements could be completed for reducing the army, which had as yet not been paid. This offer was immediately accepted by Congress. Upon the suggestion of Morris, a committee was appointed to examine into the transactions of the finance department. This committee, in a report submitted on June 17, 1783, commented most favorably upon the efficient conduct of the finances under the supervision of the Superintendent, saying that “the business of that office has been conducted with great ability and assiduity, in a manner highly advantageous to the United States, and in conformity with the system laid down by Congress.”<sup>84</sup>

<sup>81</sup> Bullock, *op. cit.*, 201.

<sup>82</sup> Journals of Congress (pub. Folwell), VIII, 104.

<sup>83</sup> Quoted in Bullock, *op. cit.*, 207.

<sup>84</sup> Journals of Congress (pub. Folwell), VIII, 184, 202.

The attacks upon his work, however, were continued. Those who had opposed the reorganization welcomed Morris' resignation as a "complete realization of their prophesies and, to make sure of a return to Treasury Boards, exaggerated the misfortunes of the administration, and invented the most malicious charges against it."<sup>85</sup>

*Reëstablishment of Board of Treasury.* Congress, on May 28, 1784, resolved again to place the supervision of the treasury and the management of the finances in a board of three commissioners, to be appointed by Congress. The new Board of Treasury was authorized to exercise all the powers previously granted by Congress to the Superintendent of Finance. Considerable difficulty was experienced in securing suitable persons to serve on the board, and for some time after the retirement of Morris in November, 1784, the affairs of the treasury were conducted by the comptroller. It was not until the middle of 1785 that the Board of Treasury assumed direction of the department. It continued to administer the finances of the Confederation until succeeded by Hamilton in 1789. "The action of Congress in placing the department again in commission was a victory for the opponents of Morris and for the advocates of the system of board management. But there were many who recognized the real reasons for the apparent failure of the Financier, and the country did not lose the benefit of its experience under a capable Minister of finance."<sup>86</sup>

*Secretary of Marine.* The efforts of Congress to secure a suitable person to fill the position of Secretary of Marine were unavailing. General McDougal, who was recommended for that office by Hamilton and whose qualifications were ample, was chosen for the position on February 27, 1781, but he declined to accept unless he be permitted to retain his rank in the army and to return to the field when his services were required. Congress refused to accede to these conditions. Several proposals were made for turning over the supervision of marine affairs to the Superintendent of Finance, but they did not win favor in Congress. Finally, in accordance with the recommendation contained in a committee report submitted on July 18, 1781, Congress resolved on August 29: "That for the present an agent of the marine be appointed, with

<sup>85</sup> Guggenheimer, *op. cit.*, 158.

<sup>86</sup> Bullock, *op. cit.*, 210.

authority to direct, fit out, equip and employ the ships and vessels of war belonging to the United States, according to such instructions as he shall, from time to time, receive from Congress." The resolution also provided for the abolition of the Board of Admiralty and the several navy boards. A resolution passed on September 7, 1781, provided that until an agent of marine should be appointed by Congress, all his duties, powers and authority should devolve upon and be executed by the Superintendent of Finance.<sup>87</sup>

*Naval Administration Transferred to Board of Treasury.* Congress seems to have made no serious attempt to secure an agent of marine, for Morris directed the administration of naval affairs until his retirement in November, 1784. "For the first time during the Revolution," says Paullin, "its [the navy's] management was marked by despatch, decision, and an expert and adequate understanding of its problems."<sup>88</sup> Following Morris' retirement, the control of naval affairs passed to the Board of Treasury. This board, aided by the commissioner for settling the marine accounts, and by James Read, secretary to Morris, with whom the latter had left the books and papers of the marine department, wound up the small, unimportant, and dwindling business of the navy.

*Secretary at War.* The selection of a Secretary at War also was not accomplished without prolonged delay. All attempts to secure an election were frustrated by the minority, which was able to force a postponement. Wells, in commenting upon Samuel Adams' hostility to the changes made in 1781, says: "By his influence, the subject of a Secretary of War was also postponed, nor was any appointed until after his departure from Congress."<sup>89</sup> Washington, in a letter written to John Sullivan, a member of Congress, on May 29, 1781, called attention to the delay in selecting the heads of the new departments as follows: "At this crisis, while I rejoice in the appointment of the minister of finance, I have sincerely to regret, that the ministers of the other departments have not also been appointed, especially a minister of war."<sup>90</sup> It was not until October 30, 1781, more than eight months after the creation of the office, that General Benjamin Lincoln was finally chosen. During

<sup>87</sup> Journals of the Continental Congress, XIX, 203; XX, 707, 724, 764; XXI, 919, 943.

<sup>88</sup> Paullin, *op. cit.*, 226.

<sup>89</sup> Wells, *op. cit.*, III, 128.

<sup>90</sup> Writings of George Washington (ed. Sparks), VIII, 60.

this period of delay, the commissioners of the Board of War, under authority of a resolution passed on February 28, 1781, had discharged the duties of the office. Secretary Lincoln was authorized, on January 17, 1782, to appoint an assistant, a secretary, and two clerks to aid him in the work of the department, it being provided that in the absence of the Secretary, the assistant should conduct the business of the office. Additional duties and powers were granted to the Secretary at War by a resolution of April 10, 1782, which provided as follows: "That the Secretary at War execute all such matters as he shall be directed by Congress, and give his opinion on all such subjects as shall be referred to him by Congress; and if at any time he shall think a measure necessary to which his powers are incompetent, he shall communicate the same to Congress for their direction therein."<sup>91</sup>

The War Department declined in importance after the cessation of hostilities, but that the work still within its scope was efficiently and faithfully executed by the new Secretary, is evidenced by the following resolution passed by Congress on October 29, 1783, following acceptance of Secretary Lincoln's resignation: ". . . That he be informed, that the United States in Congress assembled, entertain a high sense of his perseverance, fortitude, activity and meritorious services in the field, as well as of his diligence, fidelity, and capacity in the execution of the office of Secretary at War, which important trusts he has discharged to their entire approbation." Following Lincoln's resignation, the business of the department was conducted by the chief clerk as "Secretary in the War Office." An ordinance passed on January 27, 1785, "for the purpose of ascertaining the powers and duties of the Secretary at War," had the effect of reorganizing the department, although but few changes were inaugurated. Henry Knox was elected Secretary at War on March 8, 1785, and, under his direction, the departmental business was ably administered during the remaining years of the Confederation.<sup>92</sup>

*Continental Post Office.* The development of the Post Office being largely different from, and independent of, that of the other four departments, no mention has been made of it heretofore. The

<sup>91</sup> Journals of the Continental Congress, XXI, 1141; XIX, 206; XXII, 36, 178.

<sup>92</sup> Journals of Congress (pub. Folwell), VII, 323; X, 28, 51; XIII, 125.

early history of the Post Office was directly and intimately connected with colonial institutions. It may be said to have originated in a patent granted by William and Mary on February 17, 1691, to Thomas Neale, whereby the latter was given "full power and authority to erect, settle and establish within the chief parts of their Majesty's colonies and plantations in America, an office or offices for the receiving and dispatching of letters and pacquets, and to receive, send and deliver the same under such rates and sums of money as the planters shall agree to give, and to hold and enjoy the same for a term of 21 years."<sup>22</sup> Several domestic posts had previously been established by certain of the colonies, such as the New York-Boston route begun in 1672, and the system established by William Penn in 1683, but Andrew Hamilton, who was appointed by Neale as Postmaster General for America, and confirmed by the British joint Postmasters General on April 4, 1692, was the first to serve all of the British possessions in America without reference to the independent establishments of the separate colonies. For this reason, his task was extremely difficult. The Neale patent, under which he was to operate, recognized that the colonists were free to coöperate or not in the plan for inter-colonial postal communication. After much negotiation, however, Hamilton succeeded in inducing practically all of the colonial assemblies to pass postal acts that were sufficiently identical in their terms to permit the establishment of a united system of posts in America.

On May 1, 1693, a weekly service was begun between Portsmouth, N. H., and Virginia. Arrangements were made to dispatch and receive mail between the colonies and all parts of the civilized world. Liberal salaries were paid to employees in the service, and the rates of postage, though high, were not regarded as exorbitant. Although efficiently conducted with a view to serving the interests of the people, it was not a successful commercial venture, and Neale relinquished his patent to Hamilton and West, to both of whom he was heavily indebted. The Post Office was operated under Hamilton's management until his death in 1703, and then by his son, until the system was purchased by the British Government in 1707. Under the close supervision of the Crown,

<sup>22</sup> Quoted in Roper, *The U. S. post office*, 20 (1917). Cf. Woolley, *Early history of the colonial post office*, Rhode Island Historical Society Publications, *Studies in Colonial History*, (New Ser.), I, 275 *et seq.* (1893-94).

the service was gradually extended and improvements undertaken. But the office did not escape the condemnation directed against all royal institutions. Rates of postage were held to be extortionate, and the removal by the crown in 1774 of Benjamin Franklin, who had efficiently served as deputy postmaster general in charge of the colonial post office since 1753, greatly incensed the colonists. Franklin had a short time before his dismissal visited England in the interest of peace and harmony between the mother country and the colonies, but had failed to effect a reconciliation.

Matters were brought to a climax when the postmaster at Philadelphia arbitrarily raised the postage rate on newspapers to such an extent that it forced a paper in that city to discontinue publication. The editor, William Goddard, set out to establish an independent route, and sought the coöperation of the northern colonies. The new system was called the Constitutional Post Office. Goddard secured interest and support for his project in several of the northern colonies, and routes were established in each of them. It was his intention and desire, however, that Congress should undertake this work, and he appeared before that body to urge upon it the establishment of a Continental Post Office.<sup>94</sup> A committee was appointed by Congress on May 30, 1775, to consider the best means of establishing a postal system. This committee reported a plan similar to that worked out by Goddard as a basis for the Constitutional Post Office, which was adopted on July 26, 1775.<sup>95</sup> Franklin was appointed as Postmaster General to serve until his successor should be appointed. He was authorized to appoint a secretary and a comptroller to assist him in his work. The Royal Post Office in the colonies was discontinued on December 25, 1775.<sup>96</sup>

Following Franklin's appointment in 1775 and the organization of the Post Office under his direction, Congress left the control of the system almost entirely to his care, and rarely was it the subject of consideration in that body. When Franklin resigned in 1776 to go to France, and was succeeded on November 7, 1776, by his son-in-law Richard Bache, Congress began to give more attention to the affairs of this department. Complaints having been made of un-

<sup>94</sup> American Archives (4th Ser.), I, 500-04; II, 536, 537, 651, 802, 982, 1160.

<sup>95</sup> Journals of the Continental Congress, II, 71, 208.

<sup>96</sup> Roper, *op. cit.*, 36.

certainty and delay in the delivery of the mails, Congress passed several resolutions during the year 1777 aimed at the correction of abuses and the improvement of the service. Investigating committees were frequently appointed. A committee of five appointed on May 29, 1778, to investigate abuses in the department, was enlarged to eight members on January 5, 1779, and became a standing committee to which Congress referred all matters pertaining to the Post Office. Ebenezer Hazard, who had been the "Constitutional" postmaster of New York in 1775, was elected by Congress on January 28, 1782, to succeed Bache as Postmaster General. In the same year (October 18) Congress passed an ordinance for regulating the conduct of the Post Office, which was largely a compilation of the scattered regulations previously adopted, going back as early as July, 1775.<sup>97</sup> Under this act the Post Office was conducted until further provision was made by Congress under the Constitution of 1787.

**Summary of Administrative Organization, 1775-1789.** The plan of placing administrative work under the responsibility of single heads, first adopted in 1781, marks the basis of administrative organization as it exists in the United States at the present time. Only the two departments of Foreign Affairs and War, however, remained under the supervision of a secretary until the formation of the national government in 1789. "The new organization" says Learned, "was a natural and for the most part an indigenous development out of the circumstances of the Revolution. We were creating rather than copying an administrative system."<sup>98</sup> It certainly must be conceded that previous to the establishment of executive departments in 1781, the development of the various administrative boards out of the early committees of Congress had proceeded largely according to the needs of each particular case, and without very much conscious attempt to pattern after foreign systems. It is true, as has already been pointed out, that the Boards of War, Treasury, and Admiralty had derived something of their form from analogous bodies that existed in England at that time, although it is doubtful whether more than the general conception

<sup>97</sup> Journals of the Continental Congress, III, 401; IV, 107; VI, 931; VII, 29, 127, 153; IX, 816, 898; XI, 550; XIII, 26; XXII, 60; XXIII, 669.

<sup>98</sup> Learned, *op. cit.*, 55.

of the system of board management was derived from this source. Also, a number of the titles applied to administrative officers by Congress were the same as those employed to designate somewhat similar officers in France. But this is as far as foreign influence can be traced with any certainty.

The situation is different, however, with respect to the changes effected in 1781. Mention has been made of the inquiries into foreign systems which Congress instituted in 1779 through the United States commissioners in Europe. The adoption of a system of single-headed executive departments was a step distinctly in advance of formal English development, although the British secretariat had been maturing since the later days of the Tudors. The English title of Secretary at War, which was adopted by Congress, went back at least to the period of Charles II.<sup>99</sup> It seems probable that Congress, at this point, was considerably influenced by the example of the French system of administrative organization, in which the principle of unified executive authority was further developed than in England, or, perhaps, in any other country. Hamilton, recognized as the most pronounced advocate of the adoption of the principle in America, remarked, regarding the proposed heads of departments, that they "should have nearly the same powers and functions as those in France analogous to them."<sup>100</sup> The title of Superintendent of Finance, as applied to the minister of finance, seems clearly to have been of French origin. On this point Mr. Learned says: "Such circumstantial evidence, then, as can be found points unmistakably to the French origin of the American title Superintendent of Finance. It was associated at the time of its appearance in America with Sully, chief minister of Henry IV and for about twelve years the most capable occupant of the office known as the *surintendant des finances*. The appearance of the title in 1780 helped mark that wide-spread zeal for France which after the alliance of 1778 involved almost all patriotic Americans. Moreover the title itself was one among many pieces of evidence which here and there in the eighteenth century revealed the new interest felt in the work and writings of the Duke of Sully."

<sup>99</sup> Anson, Law and custom of the constitution, II, Pt. II, 192 (1907).

<sup>100</sup> Works of Alexander Hamilton, I, 159.

Somehow Sully's title gained Congressional attention, and in a form slightly altered from the French, was adopted."<sup>101</sup>

We have seen that, on the question of the proper organization of the executive departments, the Revolutionary statesmen were divided into two factions. The one, moved by the love of liberty, distrust of government, and jealousy of delegated and concentrated powers, favored placing the control of administration in the hands of committees in Congress. The other, desiring governmental authority and control, constructive legislation in the field of administration, and the application of the principles of business to the affairs of state, declared for a system of permanent and single-headed executives, chosen outside of the membership of Congress. During the first years of the struggle for independence, the advantage lay with the former. The committee system required little work to put it in operation; it was more in harmony with the ultra anti-monarchical spirit of the colonists; and it was more flexible than a system of permanent, single-headed administrative departments. Having once adopted the committee system, when it was acting merely as a convention of delegates, it was easy for Congress to retain that system when it became a government. By the year 1780, however, the "concentrative" school, as the second faction is designated by Dr. Paullin, had gained the ascendancy.<sup>102</sup> Permanency in tenure of the administration had been secured through the adoption of a system of boards, partly composed of persons not members of Congress. But the board system, as well as control by committees, was found to be unsatisfactory. Two factors contributed to the necessity for a reorganization of the administration in 1781: (1) The personnel of Congress was deteriorating; and (2) there was a greater need for economy and efficiency in administration.

The debate in Congress over the proposed change in the administrative system was lengthy, and is said to have been marked by the workings of party spirit, the self-interest of some members, and the doubts and fears and divided opinions of others.<sup>103</sup> The adoption of the system of single-headed control, however, seems

<sup>101</sup> Learned, Origin of the title superintendent of finance, *American Historical Review*, X, 572 (April, 1905).

<sup>102</sup> Paullin, *op. cit.*, 211-12.

<sup>103</sup> Reed, Life and correspondence of Joseph Reed, II, 296.

to have met with approval from the great majority of the Revolutionary leaders. Washington, writing to John Sullivan, a member of Congress, on May 11, 1781, said: "The resolution of Congress to appoint ministers of war, foreign affairs, and finance, gave, as far I was able to learn, the sentiments of men in and out of the army, universal satisfaction."<sup>104</sup> John Adams, who, in the first years of the war, was inclined to support the views of Samuel Adams and his school, wrote to Livingston, Secretary of Foreign Affairs, on February 14, 1782, as follows: "It is with great pleasure I learn that a minister is appointed for foreign affairs, who is so capable of introducing into that department an order, a constancy, and an activity which could never be expected from a committee from Congress, so often changing, and so much engaged in other great affairs, however excellent their qualifications or dispositions. Indeed, Sir, it is of infinite importance to me to know the sentiments of Congress; yet I have never known them in any detail or with any regularity since I have been in Europe."<sup>105</sup>

Although only two of the departments continued under the direction of a secretary or minister until the close of the Confederation, the advantages of single-headed control had been so conclusively demonstrated that when the first Congress under the new Constitution began the consideration of administrative organization in 1789, serious objection was raised against the establishment of single-headed administrative departments in only one instance; namely, in connection with a finance department. The hostile criticism directed against Morris in 1783, his subsequent resignation, and the return to the system of board control in that department gave the opponents of single-headed control their only opportunity to present a formidable case in favor of multiple control, but even here they were badly defeated.

<sup>104</sup> Writings of George Washington, VIII, 39.

<sup>105</sup> Works of John Adams (ed. Adams), VII, 510. Possibly Adams' direct contact with the conduct of administration as Minister to Holland served to alter his opinion as to the relative merits of committee or board and single-headed administrative control.

## CHAPTER III

### FOUNDATIONS OF ADMINISTRATIVE ORGANIZATION: 1789-1800

The experience gained during the struggle for independence and the period of the Confederation, in the repeated attempts to introduce a greater degree of efficiency and responsibility in the administration of governmental affairs, was of great value to the members of the first Congress when they proceeded to the establishment of executive departments in 1789. And it was due, no doubt, to the experience thus acquired, that Congress was led to adopt a system of administrative organization which has ever since been accepted and maintained as a basis for the further development of the national administration in the United States. The Secretaries of State, War, and Treasury still hold their offices by virtue of acts passed by Congress in 1789, the provisions of which were later incorporated in the Revised Statutes. Were it not for the fact that the frequent failures and a few successes encountered in the conduct of administration during the period from 1775 to 1789 were matters of common knowledge to most of the members of the Convention of 1787, and of the first Congress which convened two years later, this remarkable success in securing the adoption of a system of administrative organization, which has been capable of unlimited expansion and development, in accordance with the needs of a rapidly growing central government, would seem to substantiate the contentions of those who seek to explain the origin of our governmental institutions in the marvelous inspiration of the early statesmen.

The movement in favor of the establishment of single-headed executive or administrative departments, which met with at least nominal success in 1781, was accompanied by various proposals for combining the principal administrative officers into an advisory

council. An anonymous writer in an issue of the Pennsylvania Packet, under the date of February 10, 1781, commented as follows on the adoption by Congress, three days before, of a new system of administrative organization: "Congress hath determined on a measure which will give life and energy to our proceedings, both in civil and military line . . . that of putting a man at the head of each of the great departments. . . . As the persons who shall fill those offices have the fullest information respecting all our affairs, they may render the public essential services and facilitate the business of Congress, if they were frequently to meet together to deliberate on them, and then to lay their opinions and plans before Congress. Much therefore will depend on their having a good understanding and friendly intercourse among themselves. . . ." A similar anonymous article appeared in an issue of the Pennsylvania Gazette on April 11, 1781, in which the writer expressed the conviction that these officers "might, if they should be men of general knowledge beyond the line in which they act, be extremely useful in another capacity; for, possessing among themselves ample knowledge of everything relative to public affairs, they might meet frequently together, consult what ought to be done, and submit their sentiment to Congress. By this means much time and labor would be saved to Congress; and the public business would be carried on with regularity, vigor and expedition. . . ."<sup>1</sup>

"For the first time in American history," says Mr. Learned, "a combination of department heads as an advisory council to Congress could be suggested as a possibility in the spring of 1781. The two foregoing plans [quoted above] were probably made casually and without reference to precedent, colonial or British. They came naturally from the circumstances of the American continental situation. Both writers perceived that a council of well-informed and sagacious administrative officers could do something toward vitalizing and perhaps enforcing a congressional policy. The weakness or strength of any such body would depend upon the degree of its subordination to Congress and the mutual relation existing between it and Congress. To have given such a body of administrators a status around an executive chief, himself relatively free

<sup>1</sup> Quoted in Learned, *The president's cabinet*, 59-60 (1912).

from congressional control, would have resulted in a combination very much akin to the later President and Cabinet.”<sup>2</sup>

Two years after the appearance of these two articles, Pelatiah Webster, a merchant of Philadelphia and a writer of considerable influence, brought forward a more definite proposal, which was published in a pamphlet entitled *A Dissertation on the Political Union and Constitution of the Thirteen United States of North America*. Webster assumed that there would be several heads of departments, such as had been provided for in 1781, and which he termed “great ministers of state.” After noting that Congress would be composed of men delegated by the several states, and therefore that these men would be liable to be deluded or prejudiced by local or sectional views, and that they would need much information in order to gain that enlargement of ideas which would take into view the interests of all the states, Webster said: “This information may perhaps be best made by the great ministers of state, who ought to be men of the greatest abilities and integrity; their business is confined to their several departments, and their attention engaged strongly and constantly to all the several parts of the same; the whole arrangement, method, and order of which, are formed, superintended, and managed in their offices, and all informations relative to their departments center there. These ministers will of course have the best information, and most perfect knowledge, of the State of the Nation, as far as it relates to their several departments, and will of course be able to give the best information to Congress, in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole.”<sup>3</sup> He further proposed that “the aforesaid great ministers of state shall compose a Council of State, to whose number Congress may add three others, viz., one from New England, one from the middle States, and one from the southern states, one of which to be appointed President by Congress; to all

<sup>2</sup> Learned, *op. cit.*, 61. The similarity of these two proposals, both appearing in Pennsylvania papers, suggests the possibility of a common author. Furthermore, the plan later developed by Pelatiah Webster of Philadelphia for an advisory council composed of the heads of departments is, in essence, only an elaboration upon these two earlier proposals, and consequently suggests Webster as the proponent of all three. There is no direct evidence, however, to support this conjecture.

<sup>3</sup> Webster, *Political essays*, 213 (1791).

of whom shall be committed the supreme executive authority of the States . . . who shall superintend all the executive departments, and appoint all executive officers, who shall be accountable to, and removable for just cause by, them or Congress, *i. e.*, either of them.”<sup>4</sup>

**Proposals in the Constitutional Convention of 1787.** In the Convention of 1787, the desirability of establishing executive departments in charge of ministers of state and of providing an advisory council of state, which would be composed, partially at least, of these officers, was frequently the subject of discussion. The determination of the convention to provide in the Constitution for a single executive head tended to strengthen the sentiment in favor of a provision for surrounding him with some kind of a council. Eleven of the thirteen states represented in the convention had already associated with their chief executive officer various sorts of councils, differing as to number and manner of appointment, whose duties were either to revise legislation, appoint minor officers, or to advise and assist the governor.<sup>5</sup> Thus each member of the convention had an opportunity to present the plan of his own state, while some proposed original designs.

“It was apparent from an early date in 1787,” says Learned, “that some place was likely to be found in any useful scheme of national government for the ‘great ministerial officers.’ The question as to the mode of relating such officers to the parts—executive, legislative, judicial—of the new or altered structure afforded a minor, though difficult, problem.”<sup>6</sup> Hamilton and Gouverneur Morris, both staunch supporters of a strong national government with a single executive at its head, favored the appointment of the principal administrative officers by the executive. Hamilton’s plan, submitted to the convention on June 18, provided that the executive should “have the sole appointment of the heads or chief officers of the departments of Finance, War, and Foreign Affairs.” Morris, in the debate on July 19, expressed the conviction that “there must be certain great officers of State; a minister of finance, of war, of foreign affairs, etc. These he presumes will exercise their func-

<sup>4</sup> *Ibid.*, 221.

<sup>5</sup> Guggenheimer, Development of the executive departments, 1775-1789, in Jameson, Essays in the constitutional history of the U. S., 171 (1889).

<sup>6</sup> Learned, *op. cit.*, 68.

tions in subordination to the Executive. . . . Without these ministers the Executive can do nothing of consequence."<sup>7</sup>

At various times during the proceedings of the convention, proposals were submitted for grouping the "great ministers of state" into some sort of a council, to act with the chief executive. The first to advocate such a council was James Madison, who, before the opening of the convention, suggested to Randolph the idea of associating the heads of departments with the executive in a "Council of Revision," with authority to examine and pass upon all legislative acts.<sup>8</sup> Randolph's plan, which was submitted to the convention on May 29, provided for a council of revision, but its composition was changed to include "a convenient number of the National Judiciary," in place of the heads of departments.<sup>9</sup> Madison's idea as to the composition of such a council, however, was incorporated in a plan submitted to the convention on the same day by Charles Pinckney, which provided for a council of revision, "consisting of the President, Secretary for Foreign Affairs, Secretary of War, Heads of the Departments of Treasury and Admiralty, or any two of them, together with the President." The latter plan also provided that the President should "have a right to advise with the heads of the different Departments as his Council."<sup>10</sup>

Objection was raised against Randolph's plan for associating the judiciary with the executive in a council of revision on the ground that such a combination would violate the principle of the separation of powers. It was also pointed out that the judiciary would have a sufficient check on legislation through the exercise of its power to pass upon the constitutionality of all legislative acts. Although several of the most influential delegates in the convention expressed themselves in favor of this part of Randolph's plan, it was finally rejected. Pinckney apparently relinquished his idea for joining the heads of the principal departments with the executive in a

<sup>7</sup> Farrand, *Records of the federal convention*, I, 292; II, 53.

<sup>8</sup> *Writings of James Madison* (ed. Hunt), II, 339.

<sup>9</sup> Farrand, *op. cit.*, I, 21. Cf. *Correspondence and public papers of John Jay* (ed. Johnston), III, 227. The New York State constitution, adopted in 1777, provided for a council of revision to be composed of the governor, chancellor, and the judges of the state supreme court. Cf. *American charters, constitutions and public laws*, 1492-1908 (ed. Thorpe), V, 2628.

<sup>10</sup> Farrand, *op. cit.*, I, 23; II, 135; III, 606.

council of revision "from a consideration that these could be called on by the Executive Magistrate whenever he pleased to consult them." The composition of a council of revision, as first proposed by Pinckney, was severely criticized by Mason, who ventured the opinion "that we can hardly find worse materials out of which to create a council of revision, or more improper or unsafe hands in which to place the power of a negative upon our laws." Following the adoption of a provision vesting the veto power in the chief executive alone, the plans for a revisionary council were abandoned.<sup>11</sup>

Pinckney's suggestion that the President be given the right to advise with the heads of the different departments, as his council, was more favorably received. Several members of the convention expressed their opinion, during the debates on the provision for a single executive, that some sort of an advisory council would be very desirable. On June 1, three days after Pinckney's plan had been submitted, Madison spoke in favor of a single executive, "when aided by a Council, who should have the right to advise and record their proceedings, but not to control his authority." Gerry was of the opinion "that a Council ought to be the medium through which the feelings of the people ought to be communicated to the Executive." Sherman, on June 4, also expressed his approval of a single executive, as already adopted in the various states, but observed that "in all the States there was a council of advice, without which the first magistrates could not act. A Council he thought necessary to make the establishment acceptable to the people. Even in Great Britain the King has a council; and though he appoints it himself, its advice has its weight with him, and attracts the confidence of the people."<sup>12</sup>

Pinckney's proposal, according to Learned, "was the first and single project for an advisory council which was offered at the very beginning of the business of the Philadelphia gathering."<sup>13</sup> The

<sup>11</sup> *Ibid.*, I, 97, 111, 138, 139, 140.

<sup>12</sup> *Ibid.*, I, 74, 97.

<sup>13</sup> Learned, *op. cit.*, 74. Pinckney's own idea as to the desirability of such an advisory council is embodied in a printed pamphlet entitled *Observations on the Plan of Government Submitted to the Federal Convention*. In this pamphlet, Pinckney says: "He [the President] will be empowered, whenever he conceives it necessary, to inspect the Departments of Foreign Affairs, of War, of Treasury, and when instituted, of the Admiralty. This inspection into the conduct of the Departments will operate as a check

subject was revived on August 18 by Ellsworth, who observed that such a council had not as yet been provided for, and expressed his conviction that there ought to be one. He, therefore, proposed that a council be established to be composed of "the President of the Senate, the Chief-Justice, and the Ministers as they might be established for the departments of foreign and domestic affairs, war, finance, and marine, who should advise but not conclude the President." Pinckney suggested that the discussion of this proposal be postponed, as Gouverneur Morris, who was absent at that time, had given notice that he would present a plan for such a body. Pinckney's own idea was "that the President should be authorized to call for advice or not as he might choose. Give him an able Council and it will thwart him; a weak one and he will shelter himself under their sanction."<sup>14</sup>

Morris presented his plan for an advisory council on August 20. He proposed that a council of state be established to assist the President in the conduct of public affairs—this council to be composed of the Chief Justice of the Supreme Court, and the Secretaries of Domestic Affairs, Commerce and Finance, Foreign Affairs, War, and Marine. The general duties of the various secretaries, who were to be appointed by the President "during pleasure," were prescribed. The President was also authorized to appoint a Secretary of State, who should act as secretary to the council as well as public secretary to the President. The work of the council, as a group, was outlined as follows: "The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the members: But he shall in all cases exercise his own judgment, and either conform to such opinions or not as he may think proper; and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular Department."

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upon those Officers, keep them attentive to their duty, and may be the means in time not only of preventing and correcting errors, but of detecting and punishing malpractices. He will have a right to consider the principals of these Departments as his Council, and to acquire their advice and assistance, whenever the duties of his Office shall render it necessary. By this means our Government will possess what it has always wanted, but never yet had, a Cabinet Council. An institution essential in all Governments, whose situation or connections oblige them to have an intercourse with other powers." Cf. Farrand, *op. cit.*, III, III.

<sup>14</sup> Farrand, *op. cit.*, II, 328, 329.

This proposal was referred to the Committee on Detail, which submitted a report two days later embodying the essential provisions of the plan as outlined by Morris, except that the position of Secretary of State was eliminated, and two more members added to the council, viz., the President of the Senate, and the Speaker of the House of Representatives.<sup>15</sup>

In spite of the favorable report of the Committee of Detail, the question of a council was not again considered by the convention until September 7. On that date, Colonel Mason, in opposing the provision to make the Vice President the *ex officio* President of the Senate, took occasion to express his dislike of any reference whatever of the power to make appointments to either branch of the legislature. He also declared that he was averse to vesting so dangerous a power in the President alone. As a method for avoiding both of these evils, he suggested that "a privy Council of six members to the President should be established; to be chosen for six years by the Senate; two out of the eastern, two out of the middle, and two out of the southern quarters of the Union, and to go out in rotation two every second year; the concurrence of the Senate to be required only in the appointment of Ambassadors, and in making treaties, which are more of a legislative nature." Such a provision Mason said, "would prevent the constant sitting of the Senate which he thought dangerous, as well as keep the departments separate and distinct. It would also save the expense of constant sessions of the Senate." Wilson also expressed his disapproval of giving the Senate a voice in appointing officers, and said that "he would prefer the Council proposed by Mason, provided its advice should not be made obligatory on the President." King, on the contrary, remarked that "most of the inconveniences charged on the Senate are incident to a Council of Advice."<sup>16</sup>

The convention voted in favor of vesting in the President, by and with the advice and consent of the Senate, the power of appointment. Mason, however, did not abandon his project for a council

<sup>15</sup> *Ibid.*, II, 342, 367.

<sup>16</sup> *Ibid.*, II, 537, 539. The New York State constitution of 1777, in addition to providing for a council of revision, also authorized the establishment of a council of appointment, to be composed of the governor and one senator from each district, chosen by the assembly. This council was empowered to appoint all officers whose appointment was not expressly provided for in the constitution. Cf. American charters, constitutions, and public laws, V, 2633.

of state. On the same day, in connection with the debate on the report of the Committee of the States, he submitted a concrete plan to the convention for such a council.<sup>17</sup> The committee, to which had been referred Morris' plan for an advisory council, recommended that the following clause be inserted in the section enumerating certain specific powers of the President: ". . . and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices." Mason declared "that in rejecting a Council to the President we were about to try an experiment on which the most despotic Governments had never ventured. . . ." He moved to postpone the consideration of this clause, and proposed that the Committee of the States be instructed to prepare a clause or clauses for establishing an executive council, to be composed as he had previously recommended, and appointed by the legislature or by the Senate alone—such council, in conjunction with the President, to make all appointments and be an advisory body. Franklin, Wilson, Dickinson, and Madison spoke in favor of Mason's proposal. Morris, who had submitted the most complete plan for an executive council and who was a member of the Committee of States, said that "the question of a Council was considered in the Committee, where it was judged that the President, by persuading his Council to concur in his wrong measures, would acquire their protection for them." Mason's proposal was negatived by the convention and the clause, as reported by the committee, was approved.<sup>18</sup>

After the adoption of this provision, no further proposals were made in the convention for an advisory council. Mason, who refused to sign the Constitution as it was finally drawn up, cited, as one of his principal objections to that instrument, the lack of a constitutional council to the President, "a thing unknown in any safe and regular government. He [the President] will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool

<sup>17</sup> On August 31 the convention referred such parts of the constitution as had been postponed and such parts of reports as had not been acted upon to a Committee of Eleven (Committee of States), which submitted its report on September 4. The convention then proceeded to a discussion of the committee recommendations. Cf. Farrand, *op. cit.*, II, 473, 496.

<sup>18</sup> Farrand, *op. cit.*, II, 541, 542, 543.

to the Senate, or a Council of State will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a Council in a free country. . . ." <sup>19</sup> Similar objections were made in a number of the state conventions, called to ratify the Constitution, but they met with little support.<sup>20</sup> Richard Henry Lee proposed in October, 1787, "that a council of state or privy council should be appointed to advise and assist in the arduous business assigned to the executive powers;" while Jefferson, writing from Paris, also voiced the complaint that no council had been provided.<sup>21</sup>

Numerous replies were made to these objections by staunch supporters of the proposed Constitution. Hamilton replied to the arguments in favor of councils, by pointing out the evils connected with them.<sup>22</sup> James Iredell, in answering Mason's objections to the Constitution, pointed out that the Privy Council in Great Britain, to which the latter referred as a constitutional council, was a mere creature of the Crown, dependent on its will both for number and duration. As to the danger of a Council of State composed of the principal officers of the various departments, he declared that the single truly and efficient council in the English Government was "one formed of their great officers." He added: "Notwithstanding their important *Constitutional Council*, everybody knows that the whole movements of their Government, where a council is consulted at all, are directed by their *Cabinet Couneil*, composed entirely of the principal officers of the great departments. . . ." <sup>23</sup>

**Establishment of Executive Departments.** The Constitution of 1787, under which the first Congress in 1789 began its work,

<sup>19</sup> *Ibid.*, II, 638. Mason's objections were written on the blank pages of his copy of the constitution, as drawn up by the Committee of Style and submitted to the convention on September 12.—*Ibid.*, II, 565. Mason remarked in the Virginia state convention, on June 18, 1788, however, that "he did not disapprove of the President's consultation with the principal executive officers." Cf. Elliot, Debates in the several state conventions on the adoption of the federal constitution . . . together with the journal of the federal convention, III, 496.

<sup>20</sup> Elliot, *op. cit.*, II, 408, 553; III, 195; IV, 117-18.

<sup>21</sup> Letters of Richard Henry Lee (ed. Ballagh), II, 442n. Documentary history of the Constitution (ed. Bureau of Rolls and Library, Dept. of State), IV, 377, 408, 387, 416.

<sup>22</sup> The Federalist (ed. Dawson), Nos. 69 and 76.

<sup>23</sup> Ford, Pamphlets on the constitution of the U. S., 345 *et seq.*

contained only a very indirect reference to the establishment of single-headed administrative departments. Article II, Section II, Paragraph 2, provided that "the Congress may by law vest the appointment of such inferior officers, as they may think proper, in the President alone, in the Courts of Law, or in the *Heads of Departments*," while Paragraph 1 of the same section authorized the President to "require the opinion, in writing, of the *principal officers in each of the executive Departments*, upon any subject relating to the duties of their respective offices."<sup>24</sup> The proceedings and debates in the convention, however, and the statements of its members made after the convention had finished its work, clearly indicate that the creation of administrative departments, with a single officer at the head of each, was practically taken for granted, and that such officers would act as advisors to the President, was considered highly desirable, not to say almost inevitable. Ellsworth, who had proposed during the convention a plan for an advisory council,<sup>25</sup> gave it as his opinion that "if any information is wanted, the heads of the departments who are always at hand can best give it, and from the manner of their appointment will be trustworthy."<sup>26</sup> James Wilson, speaking before the Pennsylvania state convention on December 1, 1787, said that the President "will have before him the fullest information. . . . He will avail himself not only of records and official communications . . . but he will have also the advice of the executive officers in the different departments. . . ."<sup>27</sup> James Iredell, discussing in the North Carolina state convention, on July 28, 1788, the clause authorizing the President to require the opinion of the heads of departments, said that this provision was "in some degree substituted for a council. . . . He [the President] can at no time want advice, if he desires it, as the principal officers will always be on the spot . . . . Every good that can be derived from the institution of a council may be expected from the advice of these officers. . . ."<sup>28</sup> Mention has already been made of Mason's contention

<sup>24</sup> Italics mine.

<sup>25</sup> *Supra*, 83-84.

<sup>26</sup> Quoted in Learned, *op. cit.*, 86.

<sup>27</sup> Elliot, *op. cit.*, II, 448.

<sup>28</sup> *Ibid.*, IV, 108-10.

that without a constitutional council, a council of state would grow out of the principal officers of the great departments.<sup>29</sup>

Aided by the experience of the Confederation and the knowledge of many of its members concerning the plans proposed in the convention of 1787, Congress took into consideration early in its first session the organization of administrative departments. The various proposals for grouping administrative officers into a council serve to indicate to a certain extent the ideas of their progenitors as to the number and titles of departments. A survey of these proposals made in the convention shows a practically universal recognition that Departments of Foreign Affairs, Treasury or Finance, War, and Marine would be established under the new national government. The plan of Gouverneur Morris, which attracted the greatest attention in the convention, also included a Department of Domestic Affairs, and added Commerce to the Department of Finance. Commodore John Paul Jones, in a letter written to Lafayette in 1788, said that "had I the power, I would create at least seven ministries in the primary organization of government under the Constitution. In addition to the four already agreed upon, I would ordain a Ministry of Marine, a Ministry of Home Affairs and a General Post-Office; and as commerce must be our great reliance it would not be amiss to create also as the eighth a Ministry of Commerce."<sup>30</sup> The comparative simplicity of the problems of national administration in 1789, however, as well as state jealousy of the extension of central power and control, operated against the creation of any more departments than were clearly necessary.

On May 19, 1789, the House of Representatives having resolved itself into a Committee of the Whole House on the state of the Union, Elias Boudinot of New Jersey moved "that an office be established for the management of the finances of the United States, at the head of which shall be an officer to be denominated the Secretary of Finance." He spoke as follows, in introducing his motion: "The great Executive departments which were in existence under the late Confederation, are now at an end, at least so far as not to be able to conduct the business of the United States. If we take up the present Constitution, we shall find it contemplates

<sup>29</sup> *Supra*, 86-87.

<sup>30</sup> Quoted in Hill, *The federal executive*, 15 (1916).

departments of an Executive nature in aid of the President; it then remains for us to carry this intention into effect, which I take it will be best done by settling principles for organizing them in this place, and afterwards appoint a select committee to bring in a bill for the same." Because of the pressing necessity for establishing a Finance Department, Boudinot proposed to confine the debate to that question, postponing the consideration of the War Department and a Department of Foreign Affairs until a later date. Mr. Benson wished the committee to decide first upon the number of departments to be established, pointing out that the Constitution specifically contemplates a division of administrative powers, since "it gave the President the right of requiring the opinion of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices." He moved the establishment of three executive departments, "to be severally denominated the Department of Foreign Affairs, Treasury, and War." Mr Vining thought a fourth department should be added; *viz.*, the Home Department. "The territorial possessions of the United States, and the domestic affairs," he said, "would be objects of the greatest magnitude, and he suspected would render it essentially requisite to establish such a one."<sup>21</sup>

*Department of Foreign Affairs.* All proposals were withdrawn in favor of a motion made by Madison, who proposed "that there shall be established an Executive Department to be denominated the Department of Foreign Affairs, at the head of which there shall be an officer, to be called the Secretary to the Department of Foreign Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate; and to be removable by the President." Similar proposals were included for a Treasury Department and a War Department. Vining seconded the motion, and then offered an amendment adding the Domestic Department, which, in his opinion, was of absolute necessity, and more requisite than either of the other three, except the Department of Finance, but was persuaded later to withdraw his amendment for the time being. Some objection was raised to the consideration of the Department of Foreign Affairs before

<sup>21</sup> Annals of Congress, I, 368-70.

that of the Treasury Department, but the debate proceeded upon the motion as introduced by Madison.<sup>22</sup>

The provision for establishing a Department of Foreign Affairs, in charge of a Secretary, was readily agreed to, but disagreement arose over the manner of appointing and removing the Secretary of the Department. A motion to strike out the clause authorizing the appointment of the Secretary "by the President, by and with the advice and consent of the Senate," on the ground that it looked as if Congress were conferring this power, whereas it was expressly granted in the Constitution, prevailed after a brief debate.<sup>23</sup>

The clause, "and to be removable by the President," provoked a prolonged discussion. Some contended that officers could only be removed by the process of impeachment; some argued that the removal power should be in the same hands as the appointing power, *viz.*, the President and the Senate; while others held that the power of removal was an executive power and, as such, belonged to the President by the express words of the Constitution. Madison, in defending his motion at this point, said: "I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the constitutionality of the declaration I have no manner of doubt." At the conclusion of the debate a considerable majority voted in favor of declaring the power of removal to be in the President.<sup>24</sup>

*Departments of War and the Treasury.* The committee then proceeded to the consideration of the Treasury Department. Mr. Gerry moved to postpone this subject, for the present, and proceed to the War Department, on the ground that the question of the arrangement of the Treasury Department should be given thorough consideration. He said that "the late Congress had, on long experience, thought proper to organize the Treasury Department, in a mode different from that proposed by the resolution," and that

<sup>22</sup> *Ibid.*, 370-71.

<sup>23</sup> *Ibid.*, 371-72.

<sup>24</sup> *Ibid.*, 372-73, 383.

"he would be glad to know what the reasons were that should induce the committee to adopt a different system from that which had been found most beneficial to the United States."<sup>25</sup> A motion to provide for the rising of the committee was substituted for Gerry's motion, which was agreed to without debate.

On the following day, the resolution for establishing the Treasury Department was again taken up. Gerry opened the debate by stating the question at issue; namely, "Whether we shall place this all-important Department in the hands of a single individual, or in a Board of Commissioners." He declared that the duties of the office of financier were too arduous and too important to be intrusted to one man. On the contrary, he contended that a board offered two very distinct advantages: (1) It gave the opportunity to select men from all sections of the country; and (2) it permitted a division of labor, each man doing that work for which he was best fitted. He pointed to the suspicion and disapproval of the work of Robert Morris as Superintendent of Finance, which led him to resign and obliged Congress to place the management of the Treasury Department again in the hands of a board of commissioners. He also expressed the belief that the establishment of ministers at the head of the great executive departments would induce the President to place more confidence in them than in the Senate, and the people would also be led to consider them as persons of more consequence. "But all high officers of this kind," he said, "must have confidence placed in them; they will in fact be the chancellors, the ministers of the nation. It will lead to the establishment of a system of favoritism, and the principal magistrate will be governed by these men. An oligarchy will be confirmed upon the ruin of the democracy; a Government most hateful will descend to our posterity, and all our exertions in the glorious cause of freedom will be frustrated; we shall go on till we reduce the powers of the President and Senate to nothing but a name." Reiterating his contention that a board of treasury would conduct the business of finance with greater security and satisfaction than a single officer, he moved to amend the resolution so as to read: "There shall be established a Treasury Department, at the head

<sup>25</sup> *Ibid.*, 383-84.

of which there shall be three commissioners, to be denominated the Board of Treasury.”<sup>36</sup>

That Gerry’s observations on the relative merits of a board and a single officer in charge of the Finance Department were not held by a majority of the members of the House was quickly shown. Mr. Wadsworth pronounced the board of treasury as “the worst of all institutions,” and declared: “. . . I do not remember a single instance, in any one board, that I found them to have a system that would give even tolerable satisfaction; there appeared a want of confidence in the members of them all; they seemed to have no fixed principles to guide them, nor responsibility for their conduct.” Mr. Benson observed that the same abilities would be required in each one of the three commissioners on a board of treasury as was necessary if a single person were placed at the head of the department, while Mr. Baldwin said that, after considerable reflection, he was persuaded that there was not so much responsibility in boards as there was in individuals and that boards were generally more destitute of energy than was an individual placed at the head of a department. Mr. Baldwin and Mr. Madison both explained that they were not in favor of granting unlimited authority to the Secretary for the Treasury Department, and expressed the hope that proper checks would be provided; *viz.*, a comptroller, auditors, a register, and a treasurer. Mr. Boudinot commented upon the many beneficial changes that had resulted in the management of the finances because of the change in 1781 from the board system to that of single-headed control. Mr. Gerry’s amendment was then rejected by a vote of the committee; after which the resolutions respecting the Treasury and War departments, as proposed by Madison, were both agreed to.<sup>37</sup>

*Domestic Department.* Mr. Vining proposed the establishment of a Domestic Department upon the same principles as had been adopted for the other departments, but the committee adjourned without considering the proposal.<sup>38</sup>

*Department of Foreign Affairs.* The resolution to establish the three executive departments, as proposed by Madison and amended by the committee of the whole, was reported to the House on

<sup>36</sup> *Ibid.*, 384-89.

<sup>37</sup> *Ibid.*, 389, 391-92.

<sup>38</sup> *Ibid.*, 396.

May 21. The House concurred in the resolution, and a committee of eleven was appointed to prepare and bring in a bill or bills pursuant thereto. This committee presented to the House on June 2, bills for the establishment of a Department of War and a Department of Foreign Affairs, which were received and read for the first time. These bills were read a second time on the following day, and ordered to be committed to the committee of the whole. Similar action was taken on June 5 with respect to a bill reported by the committee the preceding day for the establishment of a Treasury Department.<sup>39</sup>

The debate in the committee of the whole on the bill to establish a Department of Foreign Affairs, which began on June 16 and continued almost without interruption for six days, centered largely on the clause expressly granting to the President the power of removal. Those opposed to the retention of this clause in the bill offered four main objections to it: (1) The power of appointing and dismissing being united in their natures, the Senate, which is associated with the President in the exercise of the appointing power, should also be associated with him in exercising the power of removal; (2) that either the Constitution gives the President the power, and therefore the clause is of no effect, or it does not give him the power, and therefore it is improper for Congress to attempt to confer it upon him; (3) the Constitution does not contemplate removal from office by any other method than that of impeachment; (4) to confer such an important power on the President might result in the abuse of such authority by a bad chief executive.

Those in favor of retaining this provision were not in entire accord as to the need for it. Some argued that, as the Constitution did not expressly grant this power to any officer or department, Congress had the right specifically to grant this power to the President. Others contended that the power of removal was an executive power, and therefore was included in the general grant to the President, by the Constitution, of executive power—that, in effect, the clause was merely declaratory of the construction Congress placed upon that portion of the Constitution. The latter view was ably presented by Madison on several occasions, and seemed to express the opinion of the majority of those in favor of

<sup>39</sup> *Ibid.*, 396, 417, 418, 420.

the retention of the clause. The committee voted on June 19 against the motion to strike out this clause in the bill. A proposal to limit the duration of the act, on the supposition that, at some future time, the office of Secretary of Foreign Affairs would be unnecessary, was also negatived.<sup>40</sup>

The bill was reported to the House on June 22, and again the power of removal was the subject of debate. Mr. Benson wished to amend the bill so as to imply the power of removal to be in the President. He proposed to insert in the section providing for a chief clerk in the department, a clause directing the latter to take charge of all records, books, and papers pertaining to the department, "whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy." He also declared that if this amendment were adopted, he would move to strike out the clause "to be removable by the President." Admitting the objection of Benson that the latter clause might be construed to imply a legislative grant of power rather than a legislative construction of the Constitution, Madison indicated he would favor the proposed amendment. After a short debate, the House voted in favor of Benson's motion to amend the bill. His motion to strike out the clause agreed upon by the committee was also agreed to.<sup>41</sup>

The bill, as finally agreed upon, was read for the third time on June 24 and adopted by a vote of 29 to 22. The measure was then sent to the Senate, where it was read for the first time on June 25. Debate on the bill began on July 14 and continued until July 18, when it was passed after an unimportant change in phraseology

<sup>40</sup> *Ibid.*, 455 *et seq.*; 576-78.

<sup>41</sup> *Ibid.*, 578-85. Fisher Ames, who was a member of the House in 1789, explains the position taken by those who favored Benson's amendment as follows: "The first words, 'to be removable,' etc., were supposed to amount to a legislative disposal of the power of removal. If the Constitution had vested it in the President, it was improper to use such words as would imply that the power was to be exercised by him in virtue of this act. The mover and supporters of the amendment supposed that a grant by the legislature might be resumed, and that as the Constitution had already given it to the President, it was putting it on better ground, and, if once gained by the declaration of both houses, would be a construction of the Constitution, and not liable to future encroachments." Cf. Ames, *Life and works of Fisher Ames*, I, 55.

had been agreed to. The House accepted the amendment on July 20, and the bill became law on July 27.<sup>42</sup>

*Department of War.* The House resolved itself into a committee of the whole on June 24 to take up the bill for establishing a Department of War. Mr. Benson proposed a similar amendment, with respect to the removal power of the President, as had been adopted in the bill establishing the Department of Foreign Affairs. This, together with some other minor changes, were agreed to, whereupon the bill was passed and sent to the Senate for its concurrence. The bill was read for the first time in the Senate on July 6, but was not passed until August 4, the bill for the establishment of a Treasury Department being given precedence in the upper house. The amendments proposed by the Senate were agreed to by the House on August 5, and the bill became law on August 7, 1789.<sup>43</sup>

*Department of the Treasury.* On June 25, following the passage of the bill to establish a Department of War, the House again resolved itself into a committee of the whole to take up the bill for establishing a Treasury Department. The debate on this bill largely centered around the clause which made it the duty of the

<sup>42</sup> Annals of Congress, I, 591, 47, 49-50, 659; I Stat. L., 28. The legislative, as well as the executive, sessions of the Senate were held with closed doors until February 20, 1794. Consequently, the Annals of Congress contain merely a record of the proceedings of that body. The Journal of William Maclay contains fragmentary notes on the Senate debates in connection with the bills to establish the executive departments. Apparently the question of the removal power of the President was the subject of prolonged debate, and the bill to establish the Department of Foreign Affairs was only passed by the deciding vote of the Vice President. Senator Maclay, himself, objected to all of the bills for establishing and organizing the executive departments, as "tending to direct the most minute particle of the President's conduct. If he is to be directed how he shall do everything, it follows he must do nothing without direction. To what purpose, then, is the executive power lodged with the President, if he can do nothing without a law directing the mode, manner, and, of course, the thing to be done?" Maclay proposed that the President, when he found certain officers to be necessary in the execution of the government, should nominate proper persons for such offices. If the Senate confirmed the nominations, he could then notify the House of Representatives that such appointments had been made, recommending to the House that it provide adequate compensation for them. If the House did not approve of the appointments, it could refuse to vote an appropriation for salaries. This unusual proposal made by Senator Maclay was not even considered by the Senate. Cf. Journal of William Maclay (ed. Maclay), 103; 109-10.

<sup>43</sup> Annals of Congress, I, 591-92, 608, 48, 51, 55, 56, 676; I Stat. L. 49.

Secretary to "digest and report plans for the improvement and management of the revenue, and the support of the public credit." Those opposed to this portion of the bill contended that, while it might be well enough for the Secretary to prepare financial estimates, to permit him to report such plans and estimates would constitute an undue interference of the executive with the legislative powers. In answer to this objection, various members of the House declared that the most important service that could be rendered by the Department of Finance was that of digesting and reporting plans for the improvement of the revenue and supporting the public credit, and that plans so submitted would not infringe in the slightest degree upon the privilege of the House. Madison called attention to the fact that these were the precise words used by the former Congress on two occasions and that the same power was also annexed to the office of Superintendent of Finance, yet he had never heard that any inconvenience or danger was experienced from the regulation. ". . . Perhaps," he said, "if the power had been more fully and frequently exercised, it might have contributed more to the public good." At the close of the debate, a motion for striking out the clause was negatived, but a proposal to amend the bill by striking out the word "report" and inserting the word "prepare" was accepted. The measure was again taken up on June 29 and a proposal made by Madison to fix a definite term for the office of comptroller was discussed. The proposal was withdrawn, however, on the following day, and the bill was finally passed on July 2.<sup>44</sup>

The bill was first read in the Senate on July 6, and was passed on July 31 with certain amendments. The latter were accepted by the House with the exception of one which proposed to strike out the clause, similar to that included in the bills for establishing the Departments of Foreign Affairs and War, which implied the constitutional power of the President with respect to the removal of the

<sup>44</sup> Annals of Congress, I, 592, 604, 607, 611-15, 619. Fisher Ames describes the debate on this question as follows: "A puerile debate arose, whether the Secretary of the Treasury should be allowed to exhibit his reports and statements to the legislature. The champions of liberty drew their swords, talked blank verse about treasury influence, a ministry violation of the privileges of the House by giving him a hearing from time to time. They persevered so long and so furiously, that they lost all strength, and were left in a very small minority. The clause, permitting this liberty, passed." Cf. Ames, *op. cit.*, I, 56.

Secretary. The Senate accepted the decision of the House, and the bill became law on September 2, 1789.<sup>45</sup>

*Home Department.* The House having resolved itself into a committee of the whole, Mr. Vining, on July 23, introduced a resolution calling for the establishment of a fourth executive department to be denominated the Home Department. The duties of the head of this department, whom Vining proposed to call the Secretary of the United States, Home Department, were set forth in the resolution and included, in a general way, the work later conferred upon the Secretary of State, exclusive of foreign affairs, in addition to other duties, such as receiving and recording the census, registering patents, and reporting to the President plans for the protection and improvement of manufactures, agriculture, and commerce. Several members of the House expressed their opinion that the establishment of a Home Department was unnecessary; that many of the duties enumerated in the resolution could be performed by the other departments or by inferior officers without entailing the expense of another great department. Mr. Vining pointed out that none of the departments already established or contemplated embraced the duties contained in his proposition—duties which he considered as essential as those of any other department, except the Treasury—and that they could not be performed with advantage in any other way than by an officer appointed especially for the purpose. The resolution to establish such a department was lost by a considerable majority.<sup>46</sup>

*Department of State.* Following the defeat of Mr. Vining's resolution, a motion was made by Mr. Sedgwick that a committee be appointed to bring in a bill supplementary to the act for establishing the Department of Foreign Affairs, giving to the head of that department the custody of the records and seal of the United States, and making provision for the publication of the acts of Congress, together with such other additional duties as the committee might deem necessary. This motion was lost, but four days later Mr. Sedgwick introduced a bill "to provide for the safe keeping of the acts, records and great seal of the United States; for the publication, preservation, and authentication of the acts of Congress," etc., which was passed by the House on August

<sup>45</sup> Annals of Congress, I, 48, 51, 54, 55, 674, 676, 71, 785; I Stat. L., 65.

<sup>46</sup> Annals of Congress, I, 666-69.

27. The bill was passed by the Senate on September 7, with certain amendments, which were accepted by the House the following day, and the bill became law on September 15.<sup>47</sup> By this act the name of the department was changed from the Department of Foreign Affairs to the Department of State, and the head of the department was thereafter to be called the Secretary of State.

*Principal Issues in the Debates.* It may be well, at this point, to summarize briefly the outstanding issues raised in the debates of Congress relative to the establishment of the Departments of State, Treasury, and War, and to compare the acts providing for the organization of these three departments. In the first place, the observation made by Mr. Boudinot at the outset that the Constitution "contemplates departments of an executive nature in aid of the President" went almost unchallenged,<sup>48</sup> nor was any objection raised to placing the Departments of Foreign Affairs and War in charge of a single individual. The latter question was the subject of a heated debate, however, in connection with the establishment of the Treasury Department, and the substitution of a secretary for the board which had recently managed the finances of the Confederation was not carried without eliciting a sharp dispute as to which had proved the better plan under the old practice. The debate on the question as to the power of the President to remove the heads of the departments, after a lengthy and detailed discussion, was finally won by those who contended that this power was impliedly granted to the President by the Constitution. Apprehension and jealousy of the tendency to concentrate influence in single individuals on the part of many members of Congress was evidenced in their bitter opposition to the provision authorizing the Secretary of the Treasury to digest and report plans for the improvement of the finances. The opposition succeeded in changing the phraseology from *report* to *prepare*.

*Comparison of Statutes Creating the Departments.* An examination of the statutes establishing these three departments reveals some important differences. The acts providing for Departments of Foreign Affairs and War were designated, in each case, as an act "to establish an executive department," while the third was designated merely as an "act to establish a Treasury Department."

<sup>47</sup> *Ibid.*, 669, 674, 785, 786, 75; 887; 1 Stat. L., 68.

<sup>48</sup> *Supra*, 89.

The Secretaries of War and Foreign Affairs were made solely responsible and subordinate to the President, and only a general indication was made as to the scope of their duties. On the contrary, the Secretary of the Treasury, although he was also responsible to the President, was more minutely controlled and directed in the discharge of the specific duties assigned to him by Congress. "The dread of the one-man power at the nation's purse strings was shown," says Schouler, "not indeed in diffusing executive responsibility and marring the symmetry of the new department system, but by creating subordinate checks and counter-checks to the secretary's abuse of power."<sup>49</sup>

The peculiar position in which the act of 1789 placed the Secretary of the Treasury was largely due, Mr. Learned believes, to "general recognition of the force of popular tradition and colonial precedent in the matter of financial administration."<sup>50</sup> The legislative bodies, both in the colonies and in the states during the Revolution, had exercised a very wide extent of control over financial administration.<sup>51</sup> The draft of a constitution submitted to the Philadelphia Convention by the Committee of Detail on August 6, 1787, provided for the appointment of a Treasurer of the United States by the two houses of Congress, and a similar provision was included in the draft submitted on September 12 by the Committee of Style. In the debate on the latter report, Gorham and King of Massachusetts opposed a motion to strike out this provision on the ground that "the people are accustomed and attached to that mode of appointing Treasurers," while Sherman remarked that "as the two Houses appropriate money, it is best for them to appoint the officer who is to keep it."<sup>52</sup> The sentiment of the convention, however, was in favor of striking out this clause.

The organization of the Treasury Department is, in comparison with the other two departments, very complicated. The important powers vested by Congress in the other officers of the department, *viz.*, the comptroller, auditor, treasurer, and register, all of whom

<sup>49</sup> Schouler, *History of the U. S.*, I, 94 (1882).

<sup>50</sup> Learned, *op. cit.*, 101.

<sup>51</sup> Professor Greene, in his work on *Provincial America* (p. 77), says that "by the close of Queen Anne's reign, the colonial assemblies were, with few exceptions, enforcing their claim not merely to lay taxes and determine expenditures, but also to appoint the chief financial officer of the province."

<sup>52</sup> Farrand, *op. cit.*, II, 182, 594, 614.

were to be appointed by the President, with the advice and consent of the Senate, indicates the feeling in Congress against placing too much power in the hands of the Secretary, although the latter was "to be deemed head of the Department." In spite of the internal difficulties encountered in the organization of the Treasury Department, it is, as Mr. Hill remarks, "a remarkable commentary upon the ability of the framers of the act which established the Treasury Department that it continues today under the original plan, and that in all the history of its vast dealings there has occurred no important dereliction of duty by those in charge of the nation's funds."<sup>53</sup>

*Attorney General's Office.* In addition to the secretaries of the three great departments established in 1789, there were two other administrative officers in the national government, whose place in the system of administrative organization was not, for some time, so clearly defined. The Judiciary Act of 1789 contained the following provision in its concluding paragraph: "And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided."<sup>54</sup> Although the Attorney General was not placed at the head of an executive department until 1870, his position as legal adviser to the President and the heads of departments secured for him the rank of a principal administrative officer.

The brevity of the provision for the Attorney General's Office, says Mr. Learned, suggests the marked immaturity of the administrative-judicial system of the central government. "Indeed, so far as the central government is concerned, the office was an innovation, for no such office had been known to the Confederation."<sup>55</sup> The office of Attorney General in England, which doubt-

<sup>53</sup> Hill, *op. cit.*, 20.

<sup>54</sup> 1 Stat. L., 73, 93.

<sup>55</sup> Learned, *op. cit.*, 106.

less served as a model for Congress in 1789, dates back to the reign of Edward I.<sup>56</sup> There had also been Attorneys General in many of the colonies, as well as in some of the states in the Revolutionary period.<sup>57</sup> But, as Mr. Hill observes, "although those who drafted the Judiciary Act may have had in mind the Attorney General of England or similar officers of the Colonial Governments, the Attorney General of the United States from the first occupied a position quite unlike that held by any of these officers . . ."<sup>58</sup>

*Post Office.* The fifth of the principal administrative officers established in the formative period of the Union was that of Postmaster General. The administration of the Post Office had been in charge of a Postmaster General since the date of its establishment in 1775, although Congress on several occasions undertook a rather close supervision of postal affairs. On September 22, 1789, Congress passed an "act for the temporary establishment of the Post Office."<sup>59</sup> The House of Representatives was content to continue, for the time being, with the Post Office as it had been organized by the Congress of the Confederation, but the Senate did not concur in this opinion, and consequently introduced a bill which became law on the above date.<sup>60</sup> The general supervision of the Post Office was left to the Postmaster General, who was now made "subject to the direction of the President of the United States in performing the duties of his office." By express provision, the act of 1789 was to remain in force for only one year, but it was continued in 1790 and again in 1791. A somewhat more comprehensive act was passed in 1792, but the Post Office Establishment was not permanently organized until May 8, 1794.<sup>61</sup>

<sup>56</sup> Anson, *Law and custom of the constitution*, vol. II, Pt. I, 207 (1907). Mr. Lowell, in his work on *The government of England*, says: "The principal Law Officers of the Crown are the Attorney General, and the Solicitor General, who is his colleague and substitute. Their opinion on questions of law may be asked by the government, and by any department, although many of the departments are provided with permanent legal counsel of their own whose advice is sufficient for all ordinary matters."—I, 132.

<sup>57</sup> Learned, *op. cit.*, 106-07.

<sup>58</sup> Hill, *op. cit.*, 22.

<sup>59</sup> 1 Stat. L., 70.

<sup>60</sup> Annals of Congress, I, 888, 78, 80, 892, 893, 894.

<sup>61</sup> 1 Stat. L., 178, 218, 232, 354.

Although he was placed in charge of a department which performed a most important function of government administration, it was not until President Jackson invited the Postmaster General to enter his Cabinet in 1829, that that officer was looked upon as equal in rank to the Secretaries of State, Treasury, and War. The first reports of the Postmaster General were submitted to the Secretary of the Treasury, and the acts of 1792 and 1794 expressly provided that he should render a quarterly account to the head of the Treasury Department. That Congress was concerned lest the President should acquire a dangerous political influence through his control over the conduct of postal affairs, is clearly brought out in the debate on a proposal to grant to the President the power to establish post roads, which took place in the House of Representatives on December 6, 1791.<sup>62</sup> Provisions in the acts of 1797 and 1799 requiring the Postmaster General to make reports on certain matters direct to Congress, also indicate that the latter was determined to keep in close touch with postal organization as a factor in the revenue system of the national government.<sup>63</sup>

*Department of the Navy.* The First Congress of the United States, when it closed its work at the end of its first session on September 28, 1789, had provided for the immediate needs of national administration, although the act with respect to the Post Office Establishment was recognized as temporary in character. The experiences of the early Continental Congress and the later Congress of the Confederation, in their efforts to discover a suitable system of administrative organization, influenced to a large extent the decisions of the first Congress under the new Constitution. The incidental mention in the latter instrument of the "heads of departments" was regarded by the great majority of the members of Congress as demonstrating the existence of a settled conviction in the minds of the framers of the Constitution that administrative boards would not be revived to replace the system of single-headed control first adopted in 1781. The First Congress having laid the foundation upon which the administrative system of the nation should be constructed, it remained for succeeding congresses to introduce changes in the existing departments, shown to be desirable or necessary as a result of continued experience in the

<sup>62</sup> 2 Cong. 1 sess. (1791-93), *Annals of Congress*, 229 *et seq.*

<sup>63</sup> 1 Stat. L., 509, 512; 733, 741.

conduct of administration, and to create new departments to meet the enlarged and more varied administrative problems.

Except for the changes made in the conduct of the Post Office, which have already been reviewed, the first important step taken in the development of the national administration after 1789 was the creation of the Department of the Navy on April 30, 1798.<sup>64</sup> At the time of the establishment of the War Department in 1789, the control of naval affairs was transferred from the old Treasury Board, where it had remained during the closing years of the Confederation, to this department.<sup>65</sup> The navy of the United States, which was of very little importance in 1789, was materially increased prior to 1798 because of the constant difficulties with English aggression on the high seas, and more especially because the strained relations between France and the United States made a declaration of war seem almost inevitable. The increased naval activity, which was the natural result of these conditions, emphasized the necessity for establishing a separate department for the conduct of naval affairs.

Contrary to the procedure adopted in the establishment of the first three departments, the Senate, and not the House of Representatives, was the first to take up the consideration of a Navy Department. A resolution introduced in the Senate on April 2, 1798, calling for the appointment of a committee "to take into consideration the propriety of instituting a separate executive department, for the purpose of superintending and regulating the various objects connected with the Naval Establishment of the United States," was passed on the following day, and a committee appointed, which reported a bill on April 11. The bill was passed by the Senate on April 16 after an attempt to limit its duration had failed.<sup>66</sup> It was received in the House on the same day, but was not considered until April 25. On the latter date, the House went into a committee of the whole on the bill and reported it to the House without

<sup>64</sup> 1 Stat. L., 553.

<sup>65</sup> 1 Stat. L., 49, 50.

<sup>66</sup> 5 Cong. 2 sess. (1797-99), *Annals of Congress*, 534, 535, 539, 540, 541-42. Previous to the introduction of the resolution of April 2, the committee appointed to consider the President's annual message had recommended the establishment of a commissioner of marine in the War Department to have charge of naval affairs under the direction of the Secretary of War. Cf. *Amer. State Papers*, Mil. Affairs, I, 119.

amendment. The debate on the measure, which took place on a motion to pass it to third reading, centered mainly around the question as to whether the size of the naval establishment at that time necessitated the setting up of a separate department. Although the majority of those who participated in the debate were opposed to the bill, the motion prevailed, and on the following day the bill was passed.<sup>67</sup>

The act establishing the new department was framed along the lines of the acts creating the Departments of State and War. The duties assigned to the Secretary of the Navy, who was placed at the head of the department, were to "execute such orders as he shall receive from the President of the United States, relative to the procurement of naval stores and materials and the construction, armament, equipment and employment of vessels of war, as well as all other matters connected with the naval establishment of the United States."<sup>68</sup>

**Formation of the President's Cabinet.** The origin of the President's Cabinet has been so clearly revealed by two comparatively recent writers, Mr. H. B. Learned and Miss Mary L. Hinsdale, that no attempt will be made here to describe in detail the formation of that important institution.<sup>69</sup> The chief significance of the Cabinet, with respect to the subject of administrative organization, lies in the fact that, from its very beginning, it was composed of the heads of the great administrative departments. "When Congress in 1789 provided by law for the establishment of three administrative Secretaryships and an officer to be known as the Attorney-General," says Learned, "it was arranging machinery by means of which the chief magistrate might surround himself with four expert assistants, men qualified in foreign affairs, in finance, in army organization, and in the law."<sup>70</sup> Numerous statements were made, during the course of the debates on the establishment of the executive departments in 1789, which give adequate ground for inferring that at least a considerable number of the members of Congress clearly recognized, in setting up three departments in

<sup>67</sup> 5 Cong., 2 sess. (1797-99). *Annals of Congress*, 1426, 1522, 1545-54.

<sup>68</sup> 1 Stat. L., 553.

<sup>69</sup> Learned, *op. cit.*, Ch. V (1912); Hinsdale, *History of the president's cabinet*, 1-16 (1911).

<sup>70</sup> Learned, *op. cit.*, 47.

charge of secretaries responsible to the President, that they were surrounding the Chief Executive with a group of competent and experienced assistants.<sup>71</sup>

That President Washington, from the very outset of his administration, regarded the heads of departments as his assistants, is evidenced by the following, taken from a letter written by him to Count de Moustier on May 25, 1789: "The impossibility that one man should be able to perform all the great business of the state, I take to have been the reason for instituting the great departments, and appointing officers therein, to assist the supreme magistrate in discharging the duties of his trust."<sup>72</sup> Washington took advantage of his constitutional prerogative to "require the opinion, in writing of the principal officer in each of the executive departments" very soon after he took office, Secretary of State Jefferson alone furnishing at least a dozen written opinions during the year 1790.<sup>73</sup> Although the President did not confine himself entirely to securing the opinion of the heads of departments, asking for the advice of Vice President Adams and Chief Justice Jay on several occasions,<sup>74</sup> yet the personal relationship necessarily existing between the Chief Executive and the principal administrative officers, in the discharge of their duties, tended quite naturally toward bringing them together into an advisory or cabinet council.

Miss Hinsdale, in attempting to formulate the principle by which the members of the Cabinet were set apart from other advisers to the President, says: "Obviously the inner council was built upon the plan that had been before the Federal Convention, having for its basis the administrative departments, but including the chiefs of all the branches of the Government. How soon Washington drew a line in his own mind across the larger group, there is nothing to show; the Cabinet meeting marks the visible separation. There in some slight ground for believing that in choosing his judicial adviser, he hesitated between the Chief Justice and the much humbler Attorney General, who had not been named in the con-

<sup>71</sup> Annals of Congress, I, 462, 469, 474, 511, 521-22, 527-28.

<sup>72</sup> Writings of George Washington (ed. Ford), XI, 397.

<sup>73</sup> Writings of Thomas Jefferson (ed. Ford), V, 150, 161, 165, 175, 199, 205, 215, 231, 238, 240, 252, 260.

<sup>74</sup> Adams. Life and works of John Adams, VIII, 489, 496, 515; Correspondence and public papers of John Jay (ed. Johnston), III, 409; Writings of George Washington, XI, 497n.

vention. As for the rule by which the line was drawn,—there can be no doubt that it was removability by the President, a conclusion that is borne out by the whole history of the Cabinet.”<sup>75</sup>

Two events occurred during Washington’s administration which had the effect of making the President more dependent upon his personal assistants—the heads of departments and the Attorney General. In the first place, the President’s attempt to advise with the Senate in the matter of a proposed treaty with the Southern Indians failed, and the ineffectiveness of such procedure was so clearly demonstrated that the attempt was never repeated.<sup>76</sup> The second event was the refusal of the Supreme Court to respond to a request from the President for their advice with regard to the legal questions which arose in connection with the treaties of the United States with European nations.<sup>77</sup> The heads of departments, on the other hand, were further led to regard themselves as essentially, and in most respects, belonging to the Executive by the action of the House of Representatives in refusing, on two occasions, to permit the department secretaries to report in person to that body.<sup>78</sup>

The first occasion when the President’s personal advisers met together, as a group, to discuss important executive and administrative problems, of which record has been found, occurred in 1791. In accordance with the suggestion of President Washington, who had left Philadelphia for a tour in the South, the Vice President and the three secretaries of departments met on April 11 of that year.<sup>79</sup> A careful report of this meeting, at which time such subjects as loans, commerce, foreign relations, appointments, and frontier troubles with the Indians were considered, was submitted to the President by Secretary of State Jefferson. This first meeting of the Cabinet was the only occasion on which the Vice President was invited to attend. No conclusive evidence is available as to why the President did not include the Attorney General in this first meeting of his advisers. Jefferson, in his record of later meetings of the Cabinet, indicates that the Attorney General was regu-

<sup>75</sup> Hinsdale, *op. cit.*, 16.

<sup>76</sup> Journal of William Maclay, 130-31.

<sup>77</sup> Correspondence and public papers of John Jay, III, 486-89.

<sup>78</sup> 1 Cong. 2 sess. (1790), Annals of Congress, 1043-45; 2 Cong. 2 sess. (1792-93), *Ibid.*, 679-84.

<sup>79</sup> Writings of George Washington, XII, 34.

larly a member of the group, while Monroe, writing to a member of the House of Representatives on December 31, 1816, with respect to the duties and emoluments of the Attorney General, said: "The Attorney General has been always, since the adoption of our Government, a member of the Executive Council, or Cabinet. . . . His duties in attending the Cabinet deliberations are equal to those of any other member."<sup>80</sup>

The critical year of 1793, calling for the solution of important questions of policy, led to frequent meetings of the President's advisers, the most notable of which was that of April 19, when a decision was reached with respect to the issuance of a proclamation of neutrality.<sup>81</sup> This frequency of meeting, together with the importance of the decisions reached therein, says Learned, "brought the Cabinet for the first time forcibly into popular view as a working body." It was also at this time that the term cabinet was first used to designate the President's advisory council.<sup>82</sup> No reference was made to the Cabinet in the debates of Congress until April 25, 1798, when Livingston, in a speech opposing the creation of a Navy Department in charge of a Secretary, referred to the Cabinet as "the great council of the nation."<sup>83</sup> Although frequent references have been made, since 1798, to the President's Cabinet, especially in congressional debates, in presidential messages, and in court decisions, the existence of that institution was not recognized in the statute law of the United States until February 26, 1907, when an act was passed providing for an increase in the salaries of the heads of executive departments, who were designated as "members of the President's Cabinet."<sup>84</sup> The objection was raised, in the debate on this measure, that the President's

<sup>80</sup> Writings of Thomas Jefferson, V, 320; VI, 165, 189, 205, 210; 14 Cong. 2 sess. (1816-17), Annals of Congress, 699-700.

<sup>81</sup> Writings of Thomas Jefferson, VI, 217.

<sup>82</sup> Learned, *op. cit.*, 127. The writer attributes the application of the term "cabinet" to the President's assistants to the fact that the President was summoning to his aid a committee of officials somewhat similar to the English Cabinet Committee. "There is no evidence but the term 'cabinet,'" he says, "to show that in characterizing the President's advisers men took into account anything but the superficial resemblance to the English institution. What probably we did was to adopt a well-recognized English political term, the significance of which had been pretty well settled in the seventeenth century." Cf. *Ibid.*, 128.

<sup>83</sup> 5 Cong. 2 sess., Annals of Congress, 1552.

<sup>84</sup> 34 Stat. L., 935, 993.

Cabinet had no statutory existence, but the reference to the Cabinet was retained, as designating a well-known and functioning governmental institution.<sup>85</sup>

Thus, the Cabinet, constituting an advisory council to the President and composed of the principal administrative officers of the national government, was the creation of President Washington. The practice of calling together the heads of departments to discuss important questions of governmental policy and to advise the President, became in the course of time a settled custom. Hamilton, in a vigorous declaration aimed at President Adams' unfortunate experiences with his cabinet advisers, thus expressed, in a clear and forceful manner, the theory upon which the Cabinet, as an integral part of the national government, must rest: "A President is not bound to conform to the advice of his ministers. He is even under no positive injunction to ask or require it. But the Constitution presumes he will consult them; and the genius of our government and the public good recommend the practice. As the President nominates his ministers, and may displace them when he pleases, it must be his own fault if he be not surrounded by men who, for ability and integrity, deserve his confidence. And if his ministers are of this character, the consulting of them will always be likely to be useful to himself and to the state."<sup>86</sup>

Jefferson, in a letter to William Short written on June 12, 1807, referring to the customary practice of consultation with his "coadjutors," said: "For our government although in theory subject to be directed by the unadvised will of the President, is, and from its origin has been, a very different thing in practice. The minor business in each department is done by the head of the department on consultation with the President alone; but all matters of importance or difficulty are submitted to all the heads of departments composing the Cabinet. Sometimes, by the President's consulting them separately and successively, as they happen to call on him, but in the gravest cases calling them together, discussing the subject maturely, and finally taking the vote, on which the President counts himself but as one. So that in all important cases the Executive is in fact a directory, which certainly the President might control; but of this there was never an example either in the first or the present admin-

<sup>85</sup> 59 Cong. 2 sess. (1906-07), Congressional Record, Vol. 41, Pt. 1, 381.

<sup>86</sup> Works of Alexander Hamilton (ed. Lodge), VI, 419.

istration."<sup>87</sup> Again, in a letter to a friend written in 1823, Jefferson said that we had "fallen on the happiest of all modes of constituting the executive, that of easing and aiding our President, by permitting him to choose Secretaries of State, of Finance, of War, and of the Navy, with whom he may advise, either separately or all together, and remedy their decisions by adopting or controlling their opinions at his discretion. . . ."<sup>88</sup>

A very concise and clear exposition of the place occupied by the President's Cabinet in the governmental system of the United States, is that given by Professor Burgess in his work on Political Science and Constitutional Law: "In the exercise of his powers the President may ask the advice, if he will, of the heads of the executive departments, but he is not required to do so by the Constitution. The words of the Constitution are that the President 'may require the opinion, in writing, of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective offices.' These officers are not specifically mentioned in any other part of the Constitution. They certainly have no *collegiate* existence under the Constitution. The President may, if he chooses, consult them as a body, unless they themselves object. Should they object, he could not point to any specific clause in the Constitution which requires such an organization, or which authorizes him to require opinions in such a form. He might, of course, dismiss an officer who should refuse to take part in the collegiate deliberations. The Constitution makes the President the only bond between the executive departments. The Congress has no power to create any other bond. What we call the Cabinet is, therefore, a purely voluntary, extra-legal association of the heads of the executive departments with the President, which may be dispensed with at any moment by the President, and whose resolutions do not legally bind the President in the slightest degree. They form a privy council, but not a ministry."<sup>89</sup>

**Summary of Administrative Organization, 1789-1800.** The period from 1789 to 1800 is of tremendous significance in the development of national administration in the United States. Congress, as we have seen, made provision during its first session for

<sup>87</sup> Writings of Thomas Jefferson, IX, 69-70.

<sup>88</sup> *Ibid.* (ed. H. A. Washington), VII, 321.

<sup>89</sup> Burgess, Political science and constitutional law, II, 262 (1900).

three representative departments, with a secretary at the head of each department. The experiences encountered during the period of the Revolution and later under the Confederation had so clearly and effectively demonstrated the advantages of a system of single-headed administrative control that the adoption of such a system in 1789 was only opposed in connection with the establishment of the Treasury Department. And even in the matter of the administration of the nation's finances, this system was finally adopted, although not without encountering the opposition of those who were disposed to look with distrust and suspicion upon all measures designed to concentrate power and control in the hands of a single individual.

The important offices of Attorney General and Postmaster General were also established in 1789, although the act providing for the latter was supplanted by a statute passed in 1792, and finally by the more permanent arrangement made in 1794. The Attorney General, because of his position as legal adviser to the President and the heads of the departments, was from the first closely associated with the Chief Executive and the department secretaries, although it was not until 1870 that he was placed at the head of an executive department. The Postmaster General, on the other hand, although charged with the supervision and control of a very important administrative service, was not recognized as one of the principal administrative officers and personal advisers of the President until 1829. Because of the increased importance of naval affairs, the supervision of which had been entrusted to the Secretary of War in 1789, Congress established a Navy Department in 1798, in charge of a secretary, who was immediately placed upon a plane of equality with the heads of the other departments. Finally, an extra-legal advisory council to the President had its beginning during this period, which was destined to become a most important part of the national administration. The inception of this institution by President Washington, which came to be known as the President's Cabinet, was dictated solely by reasons of expediency, although many of the far-seeing statesmen, who had had a share in the framing of the Constitution, clearly recognized the possibility of such a council or cabinet arising from the provision in that instrument authorizing the President to require written opinions from the heads of the departments.

## CHAPTER IV

### THE DEPARTMENT OF STATE

“All administration,” says Goodnow, “may be differentiated into five well-defined branches—namely, those of foreign, military, judicial, financial, and internal affairs. All the different administrative matters requiring attention from the administration will fall under one of these five branches. It has come to be well recognized at the present time that the best arrangement of administrative business is to place some one authority at the head of each of these branches, and where it is found by experience to be necessary to make a further specialization, to take out of one of the five departments thus formed some particular matter or matters and form a separate department for its or their management.”<sup>1</sup>

Congress, as has been noted, made provision during the brief period from 1789 to 1800 for four administrative departments, a Post Office Establishment and the Office of Attorney General. The first three of the departments thus established; namely, the Departments of Foreign Affairs, War, and Treasury were each concerned with one of the five branches of administration mentioned by Professor Goodnow. A secretary, appointed by the President, with the advice and consent of the Senate, was placed at the head of each of these departments. The Post Office Establishment, under the supervision of a Postmaster General, was concerned with a most important matter of internal administration, but was not looked upon as one of the major administrative departments until President Jackson, impressed with the importance of postal administration and the opportunity for an extension of political patronage, extended an invitation to the Postmaster General to become a member of his Cabinet. The Attorney General was little more than a legal adviser to the President and the heads of departments, although a member of the Cabinet. He was not even granted the services of a clerk and a location for his office until 1818, and what may be considered as the first administrative

<sup>1</sup> Goodnow, *Principles of the administrative law of the U. S.*, 120 (1905).

power exercised by that officer, namely, the supervision and control of district attorneys, was not assigned to him until 1861. The Department of Justice, of which he is now the head, was established in 1870.

A proposal made in the First Congress to establish a Home Department was not favorably received, but, in lieu of such a department, an act was passed referring certain matters connected with the administration of internal affairs to the Department of Foreign Affairs, the name of which was changed to the Department of State. Because of the increased importance of naval affairs, calling for further specialization, Congress removed the control of the navy from the War Department in 1798, creating a separate department for naval administration. Following the establishment of the Navy Department, a period of almost fifty years intervened before Congress was led, in view of the rapid increase in the scope and importance of the administration of purely internal affairs, to provide for a Home Department. It is to the study of the development of administrative organization within the executive departments prior to 1860 that the remaining chapters of Part I will be devoted.

A comparison of the acts establishing the Departments of State, War, and Navy with that providing for a Department of Treasury reveals the fact that whereas the former provide for a chief and other clerks only, the latter lays the basis for a system of sub-departments or bureaus, in the provision for the appointment of a comptroller, an auditor, a treasurer, and a register, among whom a portion of the business of the department is permanently distributed. Congress, in the exercise of its power not only to designate the method or system to be followed in organizing the Treasury Department, but also to prescribe the duties and powers of the heads of the bureaus thus created, was, to a certain extent, undermining the principle of departmental unity. The value of providing a system of checks and balances in financial administration has been clearly demonstrated by the subsequent history of the Treasury Department, but the introduction of the bureau system into the other administrative departments has frequently resulted in a division of responsibility and a lack of proper coöordination between the bureau chiefs and the heads of the departments.

The Attorney General has held that the President has no power to establish, within a department, a bureau for which no statutory provision has been made. Thus Attorney General Bates, in an opinion rendered to the President on April 18, 1861, said: ". . . I cannot avoid the conclusion that the creation of a bureau in the War Department can only be authorized by act of Congress, designating its chief, defining his duties, and providing for the appointment or transfer of the necessary clerical force and messenger."<sup>2</sup> Frequently, however, the President, acting through the head of a department, has provided for the internal organization of a department by placing a clerk of such department at the head of each one of the bureaus or offices created. Congress, subsequently, may give legislative recognition to bureaus thus organized by administrative regulation, through the passage of appropriation acts for their continuance. In such cases, as Professor Goodnow points out "the power of the head of the department or of the President to arrange the department is limited because of the fact that what is done by statute may not be changed by administrative action."<sup>3</sup>

**Departmental Organization under Secretary Jefferson.** The growth of the bureau system is best portrayed by tracing, briefly, the development of administrative organization within each of the departments. When Secretary of State Jefferson entered upon the duties of his office, he found two officers of equal rank in charge of the affairs of the department—one in charge of the papers of the Department of Foreign Affairs and the other having custody of the great seal, the legislative records, and other papers not connected with foreign affairs, finance, or war. Although the act establishing the department provided for one chief clerk, Jefferson determined to retain these two officers in equal rank in the department.<sup>4</sup> The act of June 4, 1790, gave authority to the Secretary to employ an additional clerk in his office with a salary equal to that of the chief clerk.<sup>5</sup>

In an estimate of the expenses of his department sent to the Secretary of the Treasury on June 17, 1790, Jefferson disclosed

<sup>2</sup> *Op. Atty. Gen.*, II, 16.

<sup>3</sup> Goodnow, *op. cit.*, 124.

<sup>4</sup> *Writings of Thomas Jefferson* (ed. Ford), V, 223.

<sup>5</sup> *I Stat. L.*, 126.

the departmental organization, which consisted of "The Home Office" and "The Foreign Office," with a clerk at the head of each. The resignation in July of that year of the clerk in charge of the Home Office led Jefferson to combine the two under the supervision of a chief clerk.<sup>6</sup>

**Superintendent of Patents.** One of the domestic duties imposed upon the Department of State soon after its organization, which subsequently passed out of its jurisdiction, was the granting of patents for inventions. Under the act of April 10, 1790, which first regulated the issuance of letters patent, patents were granted by a board composed of the Secretary of State, the Secretary of War, and the Attorney General.<sup>7</sup> The records of this board were filed in the office of the Secretary of State. The board was abolished by act of February 21, 1793, and the Secretary of State alone was given authority to grant patents.<sup>8</sup> To care for the patent business in the Secretary of State's office, one Dr. William Thornton was assigned to that duty, under the title of "Superintendent of Patents." It was not until 1830, however, that the title of "Superintendent" received statutory recognition.<sup>9</sup> Thus the office of the Superintendent of Patents became the first distinct and permanent subdivision of the department.<sup>10</sup>

**Reorganizations within the Department.** "In the expansion of the department's business," says Hunt, "certain clerks were assigned to certain branches of it, and from this division of labor came the establishment of the bureaus or divisions . . . ." No

<sup>6</sup> Hunt, *The department of state*, 96-97 (1914).

<sup>7</sup> 1 Stat. L., 109.

<sup>8</sup> 1 Stat. L., 318.

<sup>9</sup> 4 Stat. L., 396. Congress had authorized the moving of the Patent Office to a new building in 1810, and President Madison, on April 11, 1816, had recommended the establishment of a distinct Patent Office under the Department of State, in charge of a director.—2 Stat. L., 589; *Messages and papers of the presidents*, I, 571.

<sup>10</sup> The United States Mint, established by act of April 2, 1792 (1 Stat. L., 246), was placed under the supervision of the Secretary of State by President Washington. The reports of the Director of the Mint were submitted thereafter through the Secretary of State until 1799. Beginning with January 31, 1799, the Director of the Mint submitted his reports directly to the President. The Mint continued as an independent establishment until 1873, when it was made a bureau of the Treasury Department. Cf. Hunt, *op. cit.*, 93. *American State Papers, Finance*, I, 473; 602.

such bureaus or divisions were recognized by title or regular arrangement, however, except in the case of the Patent Office, until Secretary McLane submitted a plan for the arrangement of his department to President Jackson on August 29, 1833. According to this plan, which was approved by the President, the department was divided into seven bureaus, namely, the Diplomatic Bureau, Consular Bureau, Home Bureau, Bureau of Archives, Laws, and Commissions, Bureau of Pardons and Remissions, Copyrights, and the Care of the Library, Disbursing and Superintending Bureau, and Translating and Miscellaneous Bureau.<sup>11</sup> The chief clerk of the department was given immediate superintendence over the work of these various bureaus. The other clerks were assigned to the bureaus according to their special fitness for particular work.

A department circular issued by Secretary Forsyth, successor to McLane, on October 31, 1834, somewhat modified the previous distribution of duties in the department. The work of the Home Bureau was enlarged, being distributed among four divisions; the Bureau of Archives, Laws, and Commissions was abolished and in its place the office of the Keeper of the Archives was created; provision was made for the office of Translator and Librarian; and the office of Disbursing Agent was substituted for the Disbursing and Superintending Bureau.<sup>12</sup> Again in 1836 the department was further systematized by Secretary Forsyth, with the approval of the President. Provision was made for the office of Chief Clerk, who was to "exercise an immediate superintendence over the duties of the respective bureaus, and over those employed in them," the Diplomatic Bureau, Consular Bureau, Home Bureau, and the offices of Keeper of the Archives, Translator, and Disbursing Agent. This arrangement of the department was continued, with some slight modifications, until a reorganization was effected by Secretary Fish in 1870.<sup>13</sup>

**Commissioner of Patents; Superintendent of Statistics.** During these changes in the arrangement of the departmental machinery, effected by administrative regulations issued by the Secretary and

<sup>11</sup> Hunt, *op. cit.*, 203-06.

<sup>12</sup> *Ibid.*, 207-09. Cf. History of the department of state, 27-28 (1901).

<sup>13</sup> Hunt, *op. cit.*, 211-218. Cf. 25 Cong. 2 sess. (1837-38), S. doc. 436, 3-8.

approved by the President, several distinctly separate bureaus were established by statutory enactment within the department. By act of July 4, 1836, the office of Commissioner of Patents was created, under the Department of State. All patents were to be signed by the Secretary of State, and countersigned by the Commissioner of Patents.<sup>14</sup> An act having been passed on August 16, 1842, which required the Secretary of State to report to Congress annually all changes and modifications in foreign commercial systems, Secretary Webster recommended to Congress that the work of arranging and condensing the information on commercial subjects received from our consuls abroad be entrusted to one person, who should also have charge of the correspondence. In the absence of congressional action in response to this recommendation, Webster exercised his own authority by assigning one of the clerks of the department to this duty. A later recommendation for a statutory provision on this subject, made to Congress by Secretary Calhoun, also met with no response. Finally, in 1854, the department organized a "Statistical Office," and the title of "Superintendent" was given to the clerk put in charge of it.<sup>15</sup> This arrangement received legislative recognition in the act of August 18, 1856.<sup>16</sup>

**Claims Clerk; Assistant Secretary.** An act approved on August 12, 1848, provided for the appointment of a clerk in the Department of State to examine claims of American citizens against foreign governments.<sup>17</sup> This provision was the basis for the creation of the office of "Examiner of Claims" some twenty years later. By act of March 3, 1853, the office of Assistant Secretary of State was created.<sup>18</sup> Prior to this date the chief clerk was the second officer in the department. His authority with respect to the bureaus of the department, together with that of similar officers in other departments, was specifically set forth in the act of August 26, 1842, which provided as follows: "That it shall be the duty of each chief clerk or principal clerk in the respective departments, bureaus, and other offices, to supervise, under the direction of his

<sup>14</sup> 5 Stat. L., 117.

<sup>15</sup> Hunt, *op. cit.*, 231-32.

<sup>16</sup> 11 Stat. L., 139.

<sup>17</sup> 9 Stat. L., 284.

<sup>18</sup> 10 Stat. L., 189, 212. This act also authorized the appointment of a disbursing clerk in the State Department.

immediately superior officer, the duties of the other clerks therein, and to see that their duties are faithfully executed, and that such duties are distributed with equality and uniformity, according to the nature of the case.”<sup>19</sup>

**Distinctive Features of Organization.** From this brief survey of administrative organization within the Department of State during the period prior to 1860, two observations may be made. In the first place, only two distinct and permanent subdivisions of the department were recognized by law, namely, the Patent Office and the Statistical Office, although an act passed in 1848 laid the foundation for the future establishment of the Office of Examiner of Claims. All the other bureaus and offices within the department were created by departmental orders, issued by the Secretary, with the approval of the President. In the second place, it is noteworthy that the principle of single-headed control was strictly observed throughout the internal organization of the department.<sup>20</sup>

<sup>19</sup> 5 Stat. L., 523, 525.

<sup>20</sup> The Secretary of State, however, was a member of several ex-officio administrative boards and commissions. The first, established by act of April 10, 1790 (1 Stat. L., 109), was composed of the Secretary of State, the Secretary of War, and the Attorney General, and was empowered to grant patents. The second, which was composed of the Secretary of State, the Secretary of the Treasury, and the Attorney General, was established by act of March 3, 1803 (2 Stat. L., 229, 233); its duty being to receive offers of compromise and settlement from companies and persons claiming lands in the “Yazoo” territory, and report their opinion thereon to Congress. A similar board was established by act of March 31, 1814 (3 Stat. L., 116), relative to lands in the Mississippi territory.

## CHAPTER V

### THE DEPARTMENT OF WAR

In striking contrast to the development of administrative organization within the Department of State, Congress has frequently exercised its authority to prescribe the internal arrangement of the War Department, oftentimes in direct opposition to the wishes of the President and the Secretary of War. Statutes hurriedly enacted in anticipation of armed conflict and providing for staff officers under the direction of the Secretary of War, were immediately repealed or superseded, in whole or in part, after the period of crisis had passed. Without attempting a detailed study of these numerous and successive changes in the organization of the War Department, it may be well to trace briefly the broad outlines of this development, with a view to formulating the general principle or principles upon which the departmental organization, during the period under consideration, was based.

**First Provisions for Staff Officers, 1790-1791.** While the systematic organization of the War Department may be said to date from the establishment in 1812, shortly before the declaration of war with England, of several bureaus, or staff departments of the military establishment, as they may be more comprehensively described, with a view to aid the army in the conduct of the impending conflict, numerous attempts had been made prior to that time to provide a satisfactory and adequate organization within the department. No provision was made in the first general organization of the army under the Constitution, pursuant to the act of April 30, 1790, for a general staff, except that the President was authorized to appoint, at his discretion, one or two inspectors, to inspect and muster the troops.<sup>1</sup> An act approved on March 3, 1791, providing for an additional military force, authorized the President, in case he should deem their employment essential to the public interest, to appoint, by and with the advice and consent of the Senate, the following staff officers: one major general, one brigadier general, one

<sup>1</sup> 1 Stat. L., 119, 120.

quartermaster, and one chaplain.<sup>2</sup> An act approved one year later (March 5, 1792), added the offices of surgeon and adjutant, the latter of whom was also to perform the duty of inspector.<sup>3</sup>

**Superintendent of Military Stores; Purveyor of Public Supplies.** Through the influence of Secretary of the Treasury Hamilton, who thought that the purchase of military stores and supplies properly came under the jurisdiction of his department, Congress enacted on May 8, 1792: "That all purchases and contracts for supplying the army with provisions, clothing, supplies in the quartermaster's department, military stores, Indian goods, and all other supplies for the use of the Department of War, be made by or under the direction of the Treasury Department." This act also provided for a paymaster, who should reside near the headquarters of the troops, and whose duty it was to receive from the treasurer all the moneys which should be intrusted to him for paying the pay, the arrears of pay, subsistence, or forage due to the troops. A Superintendent of Military Stores, who should, under the direction of the Secretary of War, superintend the receiving, safe-keeping, and distribution of military stores, was authorized by act of April 2, 1794, while an act approved on February 23, 1795, established the office of Purveyor of Public Supplies in the Treasury Department, whose duty it was to conduct the procuring and providing of all arms, military stores, provisions, and clothing for the use of the army.<sup>4</sup>

The provision in the act of 1792 whereby all purchases and contracts for supplies or services for the War Department were to be made by or under the direction of the Secretary of the Treasury was repealed by an act of July 16, 1798, which provided that such supplies or services should be purchased by the Purveyor of Public Supplies, under the direction of the chief officer of the Department of War. By the act of March 3, 1799, the Secretary of War was directly authorized to make such purchases.<sup>5</sup>

<sup>2</sup> 1 Stat. L., 222.

<sup>3</sup> 1 Stat. L., 241, 242.

<sup>4</sup> 1 Stat. L., 279; 352; 418. The establishment of the office of Purveyor of Public Supplies had been recommended to Congress by President Washington on January 7, 1794. Cf. American State Papers, Mil. Affairs, I, 61.

<sup>5</sup> 1 Stat. L., 610; 749, 754.

**Changes in Staff Organization, 1795-1802.** The General Staff, as authorized by act of March 3, 1795, included a Quartermaster General, an Adjutant General, to do also the duty of Inspector, and a Surgeon General. The provisions of this act were somewhat modified by the enactment of May 30, 1796, which authorized the appointment of a Quartermaster General, an Inspector, who should do the duty of Adjutant General, and a Paymaster General. Another modification may be noted in the act of March 3, 1797, which provided for the offices of Quartermaster General, Paymaster General, and Judge Advocate.<sup>6</sup>

Complications with England, and more particularly with France, which threatened to involve the United States in war with one or both of those nations, led Congress to grant authority to the President, by act of May 28, 1798, to organize a provisional army in the event of a declaration of war against the United States or an invasion of her territory. By the terms of this act, the President was authorized to appoint the following officers, by and with the advice and consent of the Senate, whenever he might deem their employment essential to the public interest, *viz.*, an Adjutant General, an Inspector General, a Quartermaster General, a Physician General, and a Paymaster General. This provisional army, however, was never called into service. A separation of the offices of Adjutant General and Inspector General was effected by act of July 16, 1798.<sup>7</sup>

The nearest approach to a thorough organization of the staff departments, prior to 1812, was made by Congress in 1799, and although some of these reforms were permitted to become obsolete with the later reduction of the army, the principles followed were thereafter recognized as correct and were substantially applied in the subsequent organization of the War Department. An act to regulate the Medical Establishment of the United States, approved on March 2, 1799, provided for the appointment of a Physician General, an Apothecary General, and a Purveyor, together with a suitable number of deputies, surgeons, hospital mates, and stewards. An act passed on the following day provided for four staff departments, namely, the Adjutant General's Office, the Inspector Gen-

<sup>6</sup> 1 Stat. L., 430, 431; 483; 507.

<sup>7</sup> 1 Stat. L., 558, 559; 604.

eral's Office, the Office of Quartermaster General, and the Paymaster General's Office.<sup>8</sup>

The danger of armed conflict having passed, the military peace establishment was reorganized and reduced by the act of March 16, 1802. The provision in this act for staff officers included the following: One Adjutant and Inspector of the Army, thus uniting the offices of Adjutant General and Inspector General; Chief Paymaster, who, with the aid of seven paymasters and two assistant paymasters, was charged with the payment and clothing of the troops; three military agents and such number of assistant military agents as the President might deem expedient; two surgeons, and twenty-five surgeon's mates. The probability of war with Great Britain becoming greater, an act was passed on April 12, 1808, authorizing an increase in the size of the regular army. The staff officers allowed for this increase were: Two brigade quartermasters, two brigade inspectors, and not to exceed five hospital surgeons and fifteen surgeon's mates.<sup>9</sup>

**Accountant in the War Department.** Before continuing with the development of the staff departments subsequent to 1812, some attention should be given to the organization of the War Department, prior to that date, for the performance of its other duties. The act of May 8, 1792, to which reference has been made with respect to purchases and contracts for military stores, also provided for the office of Accountant in the War Department, who was authorized to settle all accounts relative to the pay of the army, the subsistence of officers, the bounties of soldiers, the expenses of the recruiting service, and the incidental and contingent expenses of the department. The Treasurer of the United States was directed to disburse all moneys for the use of the War Department, pursuant to warrants signed by the Secretary of War, and countersigned by the Accountant of that department. The act of July 16, 1798, authorizing the making of purchases and contracts for military stores under the direction of the Secretary of War, provided that all accounts pertaining thereto should be settled by the Accountant in the War Department.<sup>10</sup>

<sup>8</sup> Stat. L., 721; 749.

<sup>9</sup> Stat. L., 132, 133; 481, 482. The need for a competent general staff was emphasized in a report submitted by the Secretary of War to the President on February 20, 1801, and transmitted to Congress two days later. Cf. American State Papers, Mil. Affairs, I, 152.

<sup>10</sup> Stat. L., 279, 280; 610.

**Engineer Corps; U. S. Military Academy.** Coincident with the organization of the Engineer Corps, by act of March 16, 1802, was the establishment of the United States Military Academy at West Point, New York. Pursuant to an act of Congress, approved March 20, 1794, which authorized the fortification of certain ports and harbors along the Atlantic seaboard, the President, in the absence of an engineer corps in the army to carry on these works, made temporary appointments of several foreign gentlemen to superintend the work, most of whom had served in the Revolutionary army, and all of whom were skilled engineers. On May 9, 1794, Congress authorized the organization of a Corps of Artillerists and Engineers. A number of those who had been temporarily employed on the harbor defenses were commissioned as officers in the corps. A significant provision in this latter act, which soon led to the establishment of a most important institution, was that authorizing the appointment of two cadets to each of the sixteen companies into which the corps was divided.<sup>11</sup>

The Corps of Artillerists and Engineers was enlarged by act of April 27, 1798, and on July 16 of that year Congress authorized the President to appoint four teachers of science to instruct the corps. The President was further authorized to appoint an inspector of artillery to be taken from the corps. An act approved on March 3, 1799, authorized the President to engage and appoint, distinct from the officers of the Corps of Artillerists and Engineers, two engineers, with the rank of lieutenant colonel, and also an inspector of fortifications, whose duties should be assigned by the Secretary of War, under the direction of the President.<sup>12</sup>

Secretary of War McHenry, in a report submitted to President Adams on January 5, 1800, which was referred to Congress on January 13, recommended the founding of a military academy, in charge of a director general. The recommendation of the Secretary, however, met with no immediate response in Congress. The following year, such an academy was established at West Point, under the direction of a private citizen. In a report submitted to the Secretary of War on March 14, 1808, Jonathan Williams, Colonel of Engineers, characterized the institution in 1801 as "nothing more than a mathematical school for the few cadets that

<sup>11</sup> I Stat. L., 345; 366.

<sup>12</sup> I Stat. L., 552; 604, 605; 749, 753.

were then in the service." He added: "It was soon found that the government of young military men was incompatible with the ordinary system of schools, and, consequently, this institution ran into disorder, and the teacher into contempt."<sup>13</sup>

The act of March 16, 1802, making provision for the military peace establishment, authorized the President, when he should deem it expedient, to organize a Corps of Engineers, composed of a principal engineer, four assistant engineers, and ten cadets. The act further provided that the corps when so organized, should be stationed at West Point, and should constitute a military academy. The superintendence of the academy was intrusted to the principal engineer, under the direction of the President, and the Secretary of War was authorized to procure, under the President's orders, the necessary books, implements, and apparatus for the use and benefit of the institution. The appointment of a teacher of the French language and a teacher of drawing, to be added to the Corps of Engineers, was authorized by act of February 28, 1803, and professors of natural and experimental philosophy, mathematics, and the art of engineering were provided for by act of April 29, 1812.<sup>14</sup>

**Bounty Lands and Pensions.** The act of 1789 establishing the Department of War provided that the Secretary of War should perform and execute such duties as should from time to time be intrusted to him by the President relative to the granting of lands to persons entitled thereto for military services rendered to the United States or relative to Indian affairs. The work of issuing military land warrants, in addition to that of entering the names of persons on the pension list, whose petitions had been approved by federal judges, was performed by a single clerk in the War Department.<sup>15</sup> The establishment of a General Land Office in the Treasury Department on April 25, 1812, relieved the Secretary of War of all duty with respect to the granting of bounty lands, except that of affixing his signature to the warrant, while the statutory regulations for the admission of persons upon the pension list and the increase of pensions were so detailed as to require only the accuracy of a clerk to arrange.<sup>16</sup>

<sup>13</sup> Am. State Papers, Mil. Affairs, I, 133, 142, 229.

<sup>14</sup> 2 Stat. L., 132, 137; 206; 720.

<sup>15</sup> 12 Cong. 1 sess. (1811-12), Annals of Congress, 1371.

<sup>16</sup> *Ibid.*; 2 Stat. L., 716.

**Indian Affairs.** The duties of the Secretary of War with respect to Indian affairs were largely supervisory in character. Treaties with the various Indian tribes were negotiated by special commissioners appointed for that purpose. The territorial area of the United States was divided into departments, for administrative purposes, with a Superintendent of Indian Affairs at the head of each department. No person was permitted to carry on trade with the Indians without first procuring a license from the superintendent of the department or such other person as the President might appoint for that purpose. By act of April 18, 1796, the President was authorized to establish trading houses, in charge of agents, for the purpose of carrying on trade with the Indians. These agents were prohibited from purchasing certain articles from the Indians, and it was made the duty of the various superintendents of Indian Affairs and their deputies to report any violations of the act by agents thus appointed. A Superintendent of Indian Trade, to purchase and transmit goods, for trading with the Indians, to the various trading posts, was authorized by act of April 21, 1806.<sup>17</sup>

**Reorganization of Staff Departments, 1812.** The need for a complete reorganization of the War Department was not fully appreciated until the approach of war with Great Britain in 1812, necessitating a large increase in the military establishment. As early as 1809, however, General Dearborn, upon his retirement from the office of Secretary of War, declared "that the business of the department had increased beyond what the capacity of any one man could perform, and that some aid and assistance was indispensable to the public service, whoever his successor might be."<sup>18</sup> His successor, William Eustis, especially emphasized the defects in the Quartermaster's Department, recommending in a report to the President, which was submitted to Congress on March 12, 1810, the repeal of that part of the act of 1802 providing for the appointment of three military agents by the President, and the substitution of a Quartermaster General, to have charge of and be responsible for the property of the War Department, to superintend the distribution of military supplies, and to whom all sub-

<sup>17</sup> 1 Stat. L., 54; 123; 137; 329; 452; 471; 743; 2 Stat. L., 58; 139; 402; 544; 12 Cong. 1 sess., Annals of Congress, 1371.

<sup>18</sup> 12 Cong. 1 sess., Annals of Congress, 1361.

ordinate officers in the department should be accountable.<sup>19</sup> No immediate action was taken by Congress relative to this proposal.

Active preparations for war were begun by the passage of an act on January 11, 1812, authorizing an additional military force. This act provided for the appointment of an Adjutant General, an Inspector General, and a Judge Advocate for each division. The establishment of a Quartermaster Department was authorized by act of March 28, 1812. The function of this department, which was placed in charge of a Quartermaster General, was to "purchase military stores, camp equipage, and other articles required for the troops, and, generally, to procure and provide means of transport for the army, its stores, artillery, and camp equipage." The office of Commissary General of Purchases was also created by this act, which became known as the Commissary or Purchasing Department. The law required the Commissary General, under the direction of the Secretary of War, "to conduct the procuring and providing of all arms, military stores, clothing, and generally all articles of supply requisite for the military service of the United States."<sup>20</sup> A third department, namely, that of Ordnance, was established by act of May 14, 1812, with a Commissary General of Ordnance as its chief officer.<sup>21</sup>

**Request for Assistant Secretaries of War.** President Madison on April 20, 1812, addressed the following message to Congress: "Among the incidents to the unexampled increase and expanding interests of the American nation, under the fostering influence of free constitutions and just laws, has been a corresponding accumulation in the several departments of the Government; and this has been necessarily the greater in consequence of the peculiar state of our foreign relations, and the connection of these with our internal administration. The extensive and multiplied preparations into which the United States are at length driven for maintaining their violated rights, have caused this augmentation of business to press on the Department of War particularly, with a weight disproportionate to the powers of any single officer, with no other aids than are authorized by existing laws. With a view to a more adequate arrangement for the essential objects of that department, I recom-

<sup>19</sup> American State Papers, Mil. Affairs, I, 256.

<sup>20</sup> 2 Stat. L., 696, 697.

<sup>21</sup> 2 Stat. L., 732.

mend to the early consideration of Congress a provision for two subordinate appointments therein, with such compensation annexed as may be reasonably expected by citizens duly qualified for the important functions which may be properly assigned to them.”<sup>22</sup>

In accordance with the recommendation of the President, a bill was introduced in the Senate on April 25, 1812, which provided for the appointment of two assistant secretaries of war, who should exercise general supervision over the work of the department, subject to the direction of the Secretary. The bill was quickly passed by the Senate, but two objections were raised against it in the House of Representatives. Some contended that the work of the department was not too great to be performed by the Secretary, with sufficient clerical assistance, especially since Congress had already made provision for the Quartermaster and Commissary departments, and a bill was then pending for the establishment of an Ordnance Department. Others, while admitting the necessity of additional assistance to the Secretary, contended that these officers, being appointed by the President and approved by the Senate, would, in a great degree, be independent of the head of the department, and consequently would create indecision, uncertainty, and discord in the department. In short, to authorize the appointment of such officers would be a return to the system of divided responsibility experienced under the administration of the Board of War. The bill, as amended in the Committee of the Whole, was passed, however, on May 1, but its final consideration in the Senate was indefinitely postponed.<sup>23</sup>

**Further Changes in Organization of Staff Departments, 1813.** An act of far-reaching importance, with respect to administrative organization within the Department of War, was passed on March 3, 1813, entitled “An Act for the better organization of the general staff of the Army of the United States.” The following staff departments were organized pursuant to this act: an Adjutant General’s Department and an Inspector General’s Department, under the supervision of an Adjutant and Inspector General; a Hospital and Medical Establishment, in charge of a Physician and

<sup>22</sup> 2 Stat. L., 671; 12 Cong. 1 sess., Annals of Congress, 209. Cf. American State Papers, Misc., II, 184.

<sup>23</sup> 12 Cong. 1 sess., Annals of Congress, 212, 216, 218, 219, 1347, 1354-75, 226, 258.

Surgeon General and an Apothecary General; and a Topographical Department, composed of eight topographical engineers and an equal number of assistants. The Secretary of War was authorized to prepare general regulations better defining and prescribing the respective duties and powers of the general staff officers, which, when approved by the President, should be respected and obeyed until altered or revoked by the same authority. This latter provision enabled the Secretary to exercise a large measure of direction and control over the work of the various staff departments.<sup>24</sup>

**Office of Superintendent General of Military Supplies.** Another act, passed on the same day, abolished the office of Superintendent of Military Stores, first created by act of April 2, 1794, and in its stead, authorized the appointment of a Superintendent General of Military Supplies, whose duties were to keep proper accounts of all the military stores and supplies purchased and distributed for the use of the army, to prescribe the forms of all the returns and accounts of such stores and supplies, to audit and settle all such accounts, and generally to perform such other duties respecting the general superintendence of the purchase, transportation, safe-keeping, and accountability of military stores, as might be prescribed by the Secretary of War. This act further authorized the Secretary of War "to define and prescribe the species as well as the amount of supplies to be respectively purchased by the Commissary-General's and Quartermaster-General's Departments, and the respective duties and powers of the said departments respecting such purchases."<sup>25</sup>

**Staff Organization under Secretaries Crawford and Calhoun.** Thus, before the close of the war of 1812, the organization of the staff departments, under the direction of the Secretary of War, had reached a degree of permanence and order which far exceeded any previous arrangement within the War Department. But the act of March 3, 1815, fixing the military peace establishment, almost destroyed the entire structure of administration thus created. This act totally suppressed the Adjutant General's and Topographical departments, abolished the Inspector General's Department, substituting therefor four brigade inspectors, and also abolished

<sup>24</sup> 2 Stat. L., 819.

<sup>25</sup> 2 Stat. L., 816.

the Quartermaster General's Department, providing, in its place, for four brigade quartermasters. The effect of this statute was modified by the construction that it did not apply to the Ordnance and Purchasing departments, or to judge advocates and chaplains, while its evils were still further diminished by the authority of the President, who ordered the provisional retention of an adjutant and inspector general, two adjutants general, a quartermaster general, a paymaster of the army, an apothecary general, and five hospital surgeons, together with a number of assistants for each of these staff offices.<sup>26</sup>

Upon the recommendation of Secretary Crawford, these temporary measures were superseded by act of April 24, 1816, which provided for a complete reorganization of the General Staff, to consist of the following officers, with their assistants: An adjutant and inspector general, a quartermaster general for each division, a commissary general of purchases, a paymaster general, an apothecary general, three topographical engineers, and a designated number of judge advocates, chaplains, and surgeons for each division.<sup>27</sup> The Ordnance Department, in charge of a Colonel of Ordnance, had been thoroughly reorganized by act of February 8, 1815.<sup>28</sup>

Secretary Calhoun's ideas with respect to the proper organization of the staff departments were similar to those of his predecessor, Mr. Crawford. Upon Calhoun's recommendation, Congress passed an act on April 14, 1818, for regulating the staff of the army. The most important changes effected by this statute were the creation of the office of Surgeon General in the Medical Department, and the substitution of the office of Quartermaster General for the provision in the previous act authorizing the appointment of a

<sup>26</sup> 3 Stat. L., 224, 225. Cf. Legislative history of the general staff, 337, 581, 129, 72, 202, 463, 409 (1901).

<sup>27</sup> 3 Stat. L., 297. Secretary Crawford, in his message to Congress, said in part: "The experience of the first two campaigns of the last war, which has furnished volumes of evidence upon this subject, has incontestably established not only the expediency, but the necessity of giving to the military establishment, in time of peace, the organization which it must have to render it efficient in a state of war. It is believed also to be demonstrable, that a complete organization of the staff will contribute as much to the economy of the establishment as to its efficiency. The stationary staff of a military establishment should be substantially the same in peace and in war, without reference to the number or distribution of the troops of which it is composed." Cf. American State Papers, Mil. Affairs, I, 636.

<sup>28</sup> 3 Stat. L., 203.

Quartermaster General for each division. The Commissary General, who was given no military rank in the act of 1816, was now to receive the rank, pay, and emoluments of a colonel of ordnance.<sup>29</sup> "Within a few years," says De Caindry, "a degree of efficiency in the War Office and in army administration had been attained superior to any that had existed before."<sup>30</sup>

**Offices of Superintendent General and Accountant Abolished.** The offices of Superintendent General of Military Supplies and Accountant in the War Department were abolished by act of March 3, 1817. This act, which embodied a portion of the recommendations submitted by the secretaries of the several executive departments in a joint report to Congress on December 9, 1816, provided for the settling of all accounts and claims in the Treasury Department. To provide for this augmentation of the duties of the Treasury Department, one comptroller and four auditors were added to that department. The accounts emanating from the War Department were directed to be audited by the Second and Third Auditors. It was made the duty of the Second Auditor to receive the "accounts relative to the pay and clothing of the army, the subsistence of officers, bounties and premiums, and the contingent expenses of the War Department," and also the accounts relative to "military and hospital stores;" while the Third Auditor was to "receive all accounts relative to the subsistence of the army, the Quartermaster's Department, and generally all accounts of the War Department other than those provided for."<sup>31</sup>

**Development in Organization of Staff Departments under Secretary Calhoun.** Secretary Calhoun was called upon by Congress to submit his views concerning the subject of the reduction of the army and the organization of the staff, which he did in a report dated December 11, 1818. In this report, Calhoun treats exhaustively the whole subject of the military establishment. "The document," says Ingersoll, "is confessedly one of the ablest of

<sup>29</sup> 3 Stat. L., 426.

<sup>30</sup> De Caindry, The establishment of the war department as one of the civil executive departments of the U. S. government, with a general view of its interior organization and administration, 45 Cong. 3 sess. (1878-79), S. rep. 555, I, 399.

<sup>31</sup> 3 Stat. L., 366; 14 Cong. 2 sess. (1816-17), Annals of Congress, 23 et seq. An additional accountant in the War Department had been authorized by act of April 29, 1816.—3 Stat. L., 322.

American state papers.”<sup>22</sup> With respect to the importance of the organization of the staff departments, Calhoun said: “ . . . No part of our military organization requires more attention in peace than the general staff. It is in every service invariably the last in attaining perfection; and, if neglected in peace, when there is leisure, it will be impossible, in the midst of the hurry and bustle of war, to bring it to perfection. It is in peace that it should receive a perfect organization, and that the officers should be trained to method and punctuality, so that, at the commencement of a war, instead of creating anew, nothing more should be necessary than to give it the necessary enlargement. . . . The act of last session regulating the staff has not only made important savings in the expenses of the army, but has given both to the Department and the staff a much more efficient organization than they ever had. Every department of the army charged with disbursements has now a proper head, who, under the laws and regulations, is responsible for its administration. The head of the Department is thus freed from detail and has leisure to inspect and control the whole of disbursements.”<sup>23</sup>

The several heads of the staff departments were called to Washington by Secretary Calhoun in 1818, with such assistants as their departmental duties required, and were organized as bureaus or sub-departments of the War Department. This bureau organization later became a matter of fixed determination, receiving legislative recognition in subsequent annual appropriation acts. Despite the convincing report prepared by Calhoun in 1818, Congress insisted on the further curtailment of the military establishment. The Secretary of War, in a further report to Congress submitted on December 12, 1820, again emphasized the importance of retaining the existing organization of staff departments. “The organization of the staff in a peace establishment,” declared Calhoun, “ought to be such that every branch of it should be completely formed, with such extension as the number of troops and posts occupied may render necessary. . . . It is believed that the true principle of its organization is, that every distinct branch of the staff should terminate in a chief, to be stationed, at least in peace, near the seat of Government, and to be made responsible for its condition.

<sup>22</sup> Ingersoll, History of the war department, 86 (1880).

<sup>23</sup> American State Papers, Mil. Affairs, I, 779 *et seq.*

It is thus that the Government may at all times obtain correct knowledge of the condition of the army in every particular, and be enabled to introduce method, order, and economy in its disbursements. It is at present, with slight exceptions, thus organized, and the beneficial effects of it have already been strikingly exemplified by experience.”<sup>34</sup>

The emphasis placed by Calhoun upon the necessity, in time of peace, for a thorough organization of the General Staff, led Congress to provide, in the act of March 2, 1821, further reducing the military peace establishment, for the retention of most of the staff departments. By this act the Subsistence Department was fully recognized, by that name, for the first time, being placed under the direction of a Commissary General of Subsistence; the union of the Adjutant General’s and Inspector General’s departments, under the direction of an Adjutant and Inspector General, was abolished, the first of these departments being placed in charge of an Adjutant General, while the second was left without a definite head, being composed of two inspectors general of equal rank; the office of Apothecary General in the Medical Department was abolished; the office of Judge Advocate was discontinued, and the Ordnance Department was merged in the Artillery.<sup>35</sup>

That the arrangement of the staff departments as effected by Secretary Calhoun met with the full concurrence and approbation of President Monroe, is evidenced by the following extract taken from his annual message of December 3, 1822: “With the organization of the staff there is equal cause to be satisfied. By the concentration of every branch with its chief in this city, in the presence of the Department, and with a grade in the chief military station to keep alive and cherish a military spirit, the greatest promptitude

<sup>34</sup> *Ibid.*, II, 189 *et seq.*

<sup>35</sup> 3 Stat. L., 615. The merging of the Ordnance Department in the Artillery was recommended by Secretary Calhoun, who believed that “by uniting the three corps of the ordnance, light artillery, and artillery in one, appointing one general staff at the head of it, and making its officers pass in rotation through the three services, the organization of the army will be rendered more simple and the instruction of the officers much more complete.” Cf. American State Papers, Mil. Affairs, II, 192. “The only material mistake,” says Ingersoll, “made by Secretary Calhoun during his long administration of the War Department, was his recommendation of this measure.”—Ingersoll, *op. cit.*, 305.

in the execution of orders, with the greatest economy and efficiency, are secured.”<sup>28</sup>

**Changes in Staff Organization, 1821-1860.** Only a very few changes were made in the organization of the staff departments during the period from 1821 to 1860. The office of Judge Advocate was re-established by act of March 2, 1849, judge advocates having been selected, since the discontinuance of that office in 1821, by detail, in the different army corps.<sup>29</sup> It was made a part of the duties of the Quartermaster’s Department, by act of May 18, 1826, “to receive from the purchasing department and distribute to the army of the United States all clothing and camp and garrison equipage required for the use of the troops.” The Quartermaster General was also charged with the duty of prescribing and enforcing, under the direction of the Secretary of War, a system of accountability for all clothing and equipage issued to the army. All the duties pertaining to the purchasing department were transferred to the Quartermaster’s Department by the act of August 23, 1842, which abolished the office of Commissary General of Purchases.<sup>30</sup> The merging of the Ordnance Department in the Artillery having proved to be a failure, that department was reorganized as an independent bureau by act of April 5, 1832.<sup>31</sup> The personnel of all of the various staff departments was considerably augmented during the Florida War (1836-42) and later during the Mexican War (1846-49).

**Board of Engineers for Fortifications.** The most significant changes made during this period pertain to the Corps of Engineers. After the close of the War of 1812, the officers of the Engineer Corps, which was retained by act of March 3, 1815, resumed their work in connection with the coast fortifications. No general system, however, had been adopted with respect to the location and construction of these fortifications. Consequently, by a War Department order issued on November 16, 1816, a “Board of Engineers for Fortifications” was authorized, to consist of three officers of the Engineer Corps, to be designated by the Secretary

<sup>28</sup> Messages and papers of the presidents, II, 188.

<sup>27</sup> 9 Stat. L., 351.

<sup>28</sup> 4 Stat. L., 173; 5 Stat. L., 512, 513.

<sup>29</sup> 4 Stat. L., 504. Cf. Upton, Military policy of the U. S., 153-54 (1904); Ingersoll, *op. cit.*, 308.

of War. A naval officer, assigned by the Secretary of the Navy, was to be added to the board, where the land defenses might make use of naval aid. The officer of the Corps of Engineers who had been assigned to the superintendence of the fortifications in any particular district, was also to be attached to the board, when it was acting in that district. This board was authorized to select the proper sites and form the plans for all new fortifications and to make reports on the progress of construction and the adequacy of the defense of works already begun, proposing such additions or alterations as they might deem necessary. The report of the board was to be submitted to the Chief of the Engineer Corps, who was directed to forward it, with such remarks as he might deem proper, to the Secretary of War for final adoption.<sup>40</sup>

**Topographical Engineers; Board of Engineers for Internal Improvements.** The Engineer Department, as it was styled by Secretary Calhoun when ordering the headquarters of that department to be removed to the seat of government in April, 1818, included the Corps of Engineers, the topographical engineers, and the military academy. By a departmental order issued on July 2, 1818, the topographical engineers were "assigned to the engineer department; and made subject to the orders of the chief engineer and commanding engineers." From this date until their organization as a distinct bureau of the War Department by departmental order of June 22, 1831, the topographical engineers formed the "topographical bureau of the engineer department." Under the authority of an act approved on April 30, 1824, to procure the necessary surveys, plans, and estimates upon the subject of roads and canals, a "Board of Engineers for Internal Improvements" was organized, to which several of the officers of the Corps of Engineers were assigned. This board, which was discontinued in 1832, made a large number of reconnoissances, surveys, plans, and estimates looking to the construction of works in the interest of commerce and navigation, and in its reports laid the basis for the later system of river and harbor improvements.<sup>41</sup>

<sup>40</sup> Quoted in Hamersly, Army register of the U. S. for one hundred years, 1779-1879, Pt. 2, 282.

<sup>41</sup> Quoted in Hamersly, *op. cit.*, 283-85. For the history of the Office of Chief of Engineers, see Institute for Government Research, Office of the Chief of Engineers, ch. I (1923).

**Lighthouse Board.** By act of March 3, 1851, the President was directed to detail from the Engineer Corps, from time to time, such officers as might be necessary to superintend the construction and renovating of lighthouses; while the act of August 31, 1852, establishing a Lighthouse Board, provided that three of its members should be officers of Engineers.<sup>42</sup>

**U. S. Military Academy.** From the time of the establishment of the United States Military Academy in 1802 until the year after the close of the Civil War, that institution remained under the supervision of the Corps of Engineers. By War Department regulations of February 25, 1815, issued with the approval of President Monroe, the commandant of the Engineer Corps was designated as Inspector of the Military Academy, and the appointment of a permanent superintendent for that institution was authorized.<sup>43</sup> The President was directed by act of August 8, 1846, to appoint a Board of Visitors which should, without compensation, conduct an annual examination of the Military Academy and report thereon to the Secretary of War. This board was to consist of members chosen alternately from every other state, the total number not to exceed one-half the number of states in the Union. Not less than six of the members of the board were to be taken from officers serving in the militia."<sup>44</sup>

**U. S. Soldiers' Home.** The War Department was given supervision over another governmental institution by the act of March 3, 1851, which provided for the establishment of a Military Asylum. The officers of the asylum, namely, a director, deputy director, and secretary-treasurer for each site of the asylum, were to be taken from the officers of the army and were to be appointed by the

<sup>42</sup> 9 Stat. L., 627, 629; 10 Stat. L., 112, 119. "The connection of Engineer officers with the construction of our lighthouses," says Hamersly, "dates back as far as 1831, at which time certain moneys appropriated for lights upon the lakes were placed by the Treasury Department in the hands of officers of the Engineers for disbursement, and from that period, to the organization of the Lighthouse Board, there were always a number of Engineer officers engaged on this duty—the construction, by law, in some cases, having been directed to be in the hands of the Engineers."—Hamersly, *op. cit.*, 286.

<sup>43</sup> Hamersly, *op. cit.*, 281. The appointment of the Superintendent of the Academy was vested in the President by act of June 12, 1858.—11 Stat. L., 332, 333.

<sup>44</sup> 9 Stat. L., 70, 71.

Secretary of War upon the recommendation of a Board of Commissioners. The General-in-Chief of the army, the generals commanding the Eastern and Western geographical military divisions, the Quartermaster General, the Commissary General of Subsistence, the Paymaster General, the Surgeon General, and the Adjutant General were designated as *ex officio* members of the Board of Commissioners, which was authorized to establish regulations for the general and internal direction of the institution, with the approval of the Secretary of War, and also to procure a site or sites for the asylum. The name of this institution was changed by act of March 3, 1859, to " Soldiers' Home " and the membership of the Board of Commissioners reduced to three officers, namely, the Commissary General of Subsistence, the Surgeon General, and the Adjutant General.<sup>45</sup>

**Pension Office and Bureau of Indian Affairs; Their Transfer to Department of the Interior.** The organization of the War Department for the performance of three duties, later transferred to another department, remains to be considered. Mention has already been made of the fact that various clerks in the department were assigned, by the Secretary of War, to the work connected with military pensions, the issuance of warrants for "bounty lands," and the supervision of Indian affairs. By departmental order, three bureaus were established within the War Department, namely, the Office of Indian Affairs, the Pension Office, and the Bounty Land Office, with a clerk at the head of each. These offices were referred to by name in appropriation acts, and also in the annual reports of the Secretary of War.<sup>46</sup> The pressure of business in the Pension Office led Secretary of War Cass, in a report submitted to Congress on January 7, 1833, to recommend the establishment by statute of a branch in the War Department to be denominated the "Pension Office." The obvious defect in the existing organization was, according to Secretary Cass, the want of legal responsibility and of efficient control in the head of the bureau. With respect to the clerk at the head of the Pension

<sup>45</sup> 9 Stat. L., 595; 11 Stat. L., 431, 434.

<sup>46</sup> 4 Stat. L., 233; 619, 622; 5 Stat. L., 17, 19. Cf. 19 Cong. 2 sess. (1826-27), S. ex. doc. 1, 507-16. The office of Superintendent of Indian Trade, first established in 1806, was abolished by act of May 6, 1822.—3 Stat. L., 679.

Office, the Secretary said: "His duties are not defined by law, nor are his acts recognized by law. While, in fact, controlling the disbursements of near \$2,500,000 annually, he is still known upon the statute book as a clerk only, with a compensation attached to that situation, and without the slightest allusion to the powers and duties he actually exercises."<sup>47</sup>

Congress embodied the recommendation of the Secretary in an appropriation act of March 2, 1833, which authorized the establishment of a Pension Office, in charge of a Commissioner of Pensions, who was made subject to the direction of the Secretary of War in the performance of his duties. The provision in the act of 1833 for this office was of limited duration, but was continued from time to time by subsequent legislation. By act of March 4, 1840, the duties with respect to naval pensions were transferred to the Commissioner of Pensions and the Secretary of the Navy was directed to participate with the Secretary of War in the supervision of the Pension Office. The act of January 20, 1843, permitted the Secretary of War to assign to the Commissioner of Pensions the duties connected with military land grants, thus abolishing the Bounty Land Office.<sup>48</sup>

The rapidly expanding work of the Indian Office, with respect to the protection and education of the Indians, as well as in the conduct of commercial intercourse and the purchase of Indian lands, also led to the establishment of a Bureau of Indian Affairs, by act of July 9, 1832.<sup>49</sup> Both the Pension Office and the Bureau of Indian Affairs were transferred to the Department of the Interior upon the establishment of that department in 1849.

**General Characteristics and Defects in Organization.** The administrative agencies within the War Department may be divided into two branches or groups. On the one hand, there are the staff bureaus or departments, which have become permanently organized, under the control of the Secretary of War, for the admin-

<sup>47</sup> 22 Cong. 2 sess. (1832-33), H. ex. doc. 34, 1-3.

<sup>48</sup> 4 Stat. L., 619, 622; 5 Stat. L., 187; 369; 597; 9 Stat. L., 3; 341. For a detailed history of this service, see Institute for Government Research, *The Bureau of Pensions*, ch. I (1923).

<sup>49</sup> 4 Stat. L., 564. A temporary agency, known as the Emigrating Indian Bureau, was established by act of May 9, 1836, and attached to the Subsistence Department.—5 Stat. L., 26, 27.

istration of certain matters pertaining to the military affairs of the nation. The organization of these staff departments, which attained its highest degree of efficiency under the supervision of Secretary Calhoun, was, for the most part, a result of legislative enactment. "Concentration of responsibility, economy of administration, and rigid accountability for materials as well as for money, were the guiding principles of the system which he [Calhoun] put in operation."<sup>50</sup>

Three serious defects in the organization of these military bureaus were later revealed, however, but were not adequately remedied until the beginning of the twentieth century. The first of these defects is briefly indicated by Brigadier General Carter, in describing the military administration of the War Department. With respect to the organization of the various staff departments in 1812 and 1813, General Carter writes: "Thus it will be seen that in groping for some method which would make it possible for the Secretary of War to perform the higher functions of his office, without being crushed by the burden of details, a hydra-headed bureau system was introduced, with a number of semi-independent chiefs, each working along his own lines without of necessity having any knowledge of the character and extent of equally important work going on in other bureaus."<sup>51</sup>

The second defect was the failure to provide a proper relationship between the general-in-chief of the military forces, the Secretary of War, and the chiefs of the staff departments. "Instead of acknowledging the general-in-chief, under the President, as the military head of the Army," says Upton, "the chiefs of staff corps have magnified the duties of the Secretary of War and have preferred to look to him, not only as the chief of administration, but as their sole and legitimate military superior. Under his protection, they have to a large degree withdrawn the operations of their departments, from the control and even inspection of the general-in-chief and other military commanders."<sup>52</sup> A third defect was the failure to provide for the periodic exchange of staff and line officers. The former, if permitted to remain at the head of one of the

<sup>50</sup> Greene, *The United States army*, *Scribner's Magazine*, XXX, 446 (October, 1901).

<sup>51</sup> Carter, *The American army*, 171 (1915).

<sup>52</sup> Upton, *op. cit.*, 159.

staff departments for an indefinite period, tended to get out of touch with the needs and problems of the actual fighting forces.

The second group, into which the administrative agencies within the War Department may be divided, embraces those services performing duties of a civil or semi-military character. The Corps of Engineers, while constituting one of the staff departments, was charged with certain duties which were not strictly a part of military administration, namely, the construction of fortifications, internal improvements, and the supervision of the military academy. To insure the proper execution of the first two of these activities, administrative boards composed largely of officers of the Engineer Corps were set up by departmental order. The appointment of a permanent superintendent for the military academy, first authorized by administrative regulation, was later given statutory sanction, while a Board of Visitors, entirely removed from the Engineer Corps, was set up by statute to examine the conduct of that institution. Another semi-military activity was added to the work of the War Department by the act establishing a military asylum, designated later as the Soldiers' Home. Army officers were assigned to superintend this institution, and a board composed of the heads of several of the staff departments was vested with authority to supervise its conduct. The permanent organization of the Pension Office and the Bureau of Indian Affairs by statutory enactment merely gave a more definite status to administrative agencies previously set up in the department by administrative regulation.

The frequency with which Congress exercised its authority to legislate upon the subject of the staff departments, and the rather extensive use of administrative boards and commissions in a supervisory capacity, may be said to characterize the organization of the War Department during the period prior to 1860. The entire business of the department was conducted under the immediate direction of the Secretary of War, either upon the authority of direct legislative grant, or as the representative of the President.

## CHAPTER VI

### THE DEPARTMENT OF THE TREASURY

**Organization, 1789.** The act of September 2, 1789, establishing the Treasury Department, provided for the following officers; namely, "a Secretary of the Treasury, to be deemed the head of the department; a Comptroller, an Auditor, a Treasurer, a Register, and an assistant to the Secretary of the Treasury; which assistant shall be appointed by the Secretary."<sup>1</sup> Two important differences are to be observed in the organization of the Treasury Department, as provided for by congressional enactment, when compared with the organization of the two departments previously created. In the first place, the Treasury Department was placed in an especially intimate relationship to Congress, largely independent of the President, by prescribing that a request for financial information be made directly to the Secretary of that department, without reference to the Chief Executive. The obvious intention on the part of Congress to keep in close touch with the administration of finance, however, was partially thwarted, first by the failure of the House of Representatives to entertain oral reports from the Secretary of the Treasury, and, later, by the vigorous assertion on the part of President Jackson of the President's authority over the heads of departments, through the exercise of the removal power.

The second difference to be noted in the act organizing the Treasury Department, is the detailed character of its provisions with respect to the appointment and duties of subordinate officers. Although the Secretary was designated as the head of the department, all of the subordinate officers, with the exception of the assistant to the Secretary, were to be appointed by the President, with the advice and consent of the Senate, and were specifically charged with the performance of certain duties, without expressly being made subject to the direction and supervision of the Secretary. The system of financial administration thus devised abounded

<sup>1</sup> 1 Stat. L., 65.

in checks and safeguards, and although clumsy, has proved a perfect protection against payments from the treasury not authorized by law, or to persons other than the proper recipients.

In making a study of the development of administrative organization within the Treasury Department during the period prior to 1860 it seems desirable to treat separately the subdivisions of the department pertaining directly to fiscal affairs and those concerned with other matters of administration which have no special relation to finance or to each other. Mention has already been made of the establishment, by the act creating the department, of the offices of comptroller, auditor, register, and treasurer. An act approved on September 11, 1789, fixed the salaries of those officers, as well as those of the Secretary and his assistant, and authorized the appointment of a principal clerk in the offices of the comptroller, the auditor, and the treasurer. The Secretary was further authorized to appoint as many clerks as he deemed necessary to perform the work of the department.<sup>2</sup>

**Accountant of the War Department; Commissioner of the Revenue.** An important feature of the act of 1789 establishing the Treasury Department was that it provided for the settlement of all public accounts, both primarily and finally, in that department. Somewhat in derogation of this original plan, however, the act of May 8, 1792, "making alterations in the Treasury and War Departments," created the office of "Accountant of the Department of War." Thereafter, disbursements from the Treasury of appropriations for the War Department were to be made, not by warrants of the Secretary of the Treasury countersigned by the comptroller, as directed by act of 1789, but by warrants of the Secretary of War and countersigned by the Accountant of the War Department. The latter officer was required to report his settlement of accounts, however, for the inspection and revision of the comptroller.

Numerous other changes and innovations in the organization and work of the Treasury Department were effected by this act. The office of assistant to the Secretary was abolished, and in its stead the office of "Commissioner of the Revenue" was created, who was charged with the collection of revenues from internal duties

<sup>2</sup> I Stat. L., 67.

and direct taxes, and the execution of such other services as should be directed by the Secretary. The latter was authorized to superintend the collection of duties on imports and tonnage, to prescribe the form of keeping and rendering all public accounts, and to make or direct the making of all purchases and contracts for army supplies. He was empowered to appoint "two principal clerks" to aid him in discharging the duties of his office.<sup>3</sup>

**Purveyor of Public Supplies; Accountant of the Navy Department.** In accordance with the provision of the above act for the purchase of supplies for the War Department by or under the direction of the Secretary of the Treasury, and upon the recommendation of the President, the office of "Purveyor of Public Supplies" in the Treasury Department was established by act of February 23, 1795. This officer was charged with the duty of procuring military supplies under the direction of the Secretary of the Treasury. The office of "Accountant of the Navy Department" was created by act of July 16, 1798, with organization and duties similar to the corresponding office in the War Department. This act further provided that thereafter all purchases and contracts for supplies for the War and Navy departments should be made under the direction of the heads of those departments, and the accounts for the same to be settled by the departmental accountants, subject to the revision of the treasury officers. The Purveyor of Public Supplies was directed to execute orders from the Secretaries of War and Navy relative to the procuring of supplies and to render his accounts to the departmental accountants. The office of Purveyor was abolished by act of March 28, 1812.<sup>4</sup>

**Office of the Commissioner of Revenue Abolished; Commissioner of Claims.** The successive enactment and repeal of internal duties and direct taxes, for the superintendence of the collection of which the office of Commissioner of the Revenue was created, led to the abolition of that office by act of April 6, 1802,

<sup>3</sup> Stat. L., 279. The duties of the Secretary with respect to the superintendence of the collection of duties on imports and tonnage were conferred upon the Comptroller of the Treasury by departmental circular issued on October 25, 1792. Cf. Mayo, *The treasury department and its various fiscal bureaus*, 7, 59 (1847).

<sup>4</sup> Stat. L., 419; 610; 2 Stat. L., 696, 697. Cf. American State Papers, Mil. Affairs, I, 61; *Ibid.*, Misc., I, 46.

its re-establishment by act of July 24, 1813, and again its abolition by the President under authority of an act approved on December 23, 1817.<sup>5</sup> The office of Commissioner of Claims was created by act of April 9, 1816, to settle claims arising from the loss of property, either captured or destroyed by the enemy, while in the military service of the United States. The life of this office was limited to two years; at the expiration of which term its duties were transferred, by act of April 20, 1818, to the office of the Third Auditor. An act passed on the same day authorized the appointment of a chief clerk in the Treasury Department.<sup>6</sup>

**General Reorganization under Secretary Crawford.** William H. Crawford was appointed Secretary of the Treasury by President Madison on October 22, 1816, and he continued as the head of that department under President Monroe, being recommissioned on March 5, 1817. "He [Crawford] signalized his administration," says Thorpe "by introducing some important improvements in the routine of the department arising out of the creation of a second comptroller and four additional auditors."<sup>7</sup> In response to a Senate resolution of April 20, 1816, requiring the secretaries of the four executive departments to report jointly a plan to insure the annual settlement of public accounts and a more certain accountability of the public expenditures, the heads of the departments recommended that the primary and final settlement of all accounts be made in the Treasury Department, as was at first contemplated in the organization of that department. For the performance of this work, they proposed that the organization of the department be modified so as to authorize the appointment of four additional auditors, an additional comptroller, and a solicitor. Their plan called for the abolition of the offices of Accountant of the War and Navy departments, and the distribution of their duties among the Second, Third, and Fourth Auditors. They further recommended that the distribution of duties among the auditors and comptrollers be left to executive regulation, in order that any changes which experience proved to be necessary, might be made with facility.<sup>8</sup>

<sup>5</sup> 2 Stat. L., 149; 3 Stat. L., 39; 401, 402.

<sup>6</sup> 3 Stat. L., 261, 263; 445; 466.

<sup>7</sup> Thorpe, *The United States treasury department, Harper's Magazine*, XLIV, 493 (March, 1872).

<sup>8</sup> American State Papers, Misc., II, 396-99.

The recommendations thus submitted to the Senate were incorporated, to a large degree, in an act of Congress passed on March 3, 1817, except that no provision was made for the office of Solicitor, and, instead of permitting a distribution of duties among the various accounting officers by executive regulation, the duties of these officers were specifically prescribed in the act. The failure to provide for a solicitor in the department was partially remedied by the act of May 15, 1820, which authorized the designation of some officer in the Treasury Department, by the President, as "Agent of the Treasury," to direct and superintend all orders, suits, or proceedings, in law or equity, for the recovery of debts due the United States. The First Comptroller was assigned to this office in the first instance and, later, the Fifth Auditor, who acted in that capacity until the establishment of the office of "Solicitor of the Treasury" by act of May 29, 1830. The latter officer, in addition to the duties previously assigned to the Agent of the Treasury, was also charged with the superintendence of the collection of outstanding direct taxes and internal duties—work which formerly belonged to the office of Commissioner of the Revenue.<sup>9</sup>

**Auditor of the Treasury for the Post Office Department.** An act of July 2, 1836, changing the organization of the Post Office Department, and providing more effectually for the settlement of the accounts of that department, established the office of a Sixth Auditor, as follows: "There shall be appointed by the President, with the consent of the Senate, an Auditor of the Treasury for the Post Office Department, whose duty it shall be to receive all accounts arising in the said department, or relative thereto; to audit and settle the same, and certify their balances to the Postmaster General. . . ." Although the act declared this office to be a part of the Treasury Department, it was only nominally so. In practice and in fact, as Mayo points out, it was an office or bureau of the Post Office Department, combining the various functions of all the provinces of the Treasury Department, except that of the

<sup>9</sup> 3 Stat. L., 366; 592; 4 Stat. L., 414. Cf. Mayo, *op. cit.*, 3. The office of an additional Accountant of the War Department, created by act of April 29, 1816, to adjust all accounts existing at the conclusion of the late war, was also abolished by the act of March 3, 1817, and authority granted to the President to assign the duties of that office to the Second or Third Auditor. The latter was placed in charge of this work by order of the President.—3 Stat. L., 322; 366. Cf. Mayo, *op. cit.*, 128.

Treasurer, within the scope of duties assigned to it, necessarily arising out of the fiscal operations of the Post Office.<sup>10</sup>

**Commissioner of Customs and Board of Appraisers.** A Commissioner of Customs was authorized by act of March 3, 1849, to perform the duties and exercise the powers hitherto devolved by law on the First Comptroller of the Treasury, relating to the receipts from customs and the accounts of collectors and other customs officers. The superintendence of the collection of custom duties which had been committed to the First Comptroller by the Secretary of the Treasury, pursuant to the act of May 8, 1792, had come to be a most important branch of the duties of that office.<sup>11</sup> As early as December 5, 1834, the Secretary of the Treasury, in response to a Senate resolution of May 8, 1832, concerning the reorganization of the Treasury Department, had recommended the transfer of this work, together with certain other duties not appropriately connected with the main business of the First Comptroller, to the office of the Second Comptroller, changing the title of the latter officer to "Commissioner of the Customs." A similar recommendation was made in a special report to Congress, by Mr. P. G. Washington, on January 6, 1837, relative to the practicability of simplifying the system of public accounts, and the proposed change was repeatedly urged by the Secretary of the Treasury in his annual reports. When Congress finally determined to act on these recommendations, the increased work in the offices of the two comptrollers made necessary the retention of both, and the creation of an additional officer to be known as the "Commissioner of Customs."<sup>12</sup> A Board of Appraisers, composed of four appraisers of merchandise, was established by act of March 3, 1851. These appraisers, who were to be appointed by the President, with the consent of the Senate, were to be employed, under the direc-

<sup>10</sup> 5 Stat. L., 80, 81; Mayo, *op. cit.*, 128. For the convenience of transacting the vast amount of business devolving on the office of the Auditor of the Treasury for the Post Office Department, the clerical corps of that office was distributed among several divisions or sub-bureaus. This force consisted, by the express provision of the act of 1836, of a chief clerk, four principal clerks, and thirty-eight other clerks. Cf. Mayo, *op. cit.*, 175-76.

<sup>11</sup> 9 Stat. L., 395, 396. Cf. *Supra*, 142n.

<sup>12</sup> 23 Cong. 2 sess. (1834-35), S. ex. doc. 6, 3-6; 24 Cong. 2 sess. (1836-37), H. ex. doc. 71, 3, 9; 25 Cong. 2 sess. (1837-38), S. ex. doc. 2, 19; 25 Cong. 3 sess. (1838-39), S. ex. doc. 2, 24.

tion of the Secretary of the Treasury, in visiting ports of entry, to aid in the appraisement of merchandise, to insure uniformity in the collection of customs duties, and to act in conjunction with a person designated by the collector, as a board of appeals from the decisions of the United States' appraisers.<sup>13</sup>

**Assistant Secretary; Disbursing Clerks.** Only two other changes relative to the organization of the Treasury Department for the administration of fiscal affairs, during the period under consideration, remain to be noted. The act of March 3, 1849, providing for a Commissioner of Customs, also authorized the appointment of an Assistant Secretary of the Treasury by the head of that department. The act of March 3, 1857, made this officer appointive by the President, with the consent of the Senate, instead of by the Secretary of the Treasury. An act approved on March 3, 1853, providing for the permanent clerical force of the various departments, authorized the Secretary of the Treasury to appoint not more than three disbursing clerks, at his discretion. These clerks were to be chosen from among the clerical force in the office of the Secretary, and were to receive additional compensation, when designated by the head of the department to superintend the buildings occupied by the department. By the terms of this act, the heads of departments were vested with authority to alter the distribution of the clerks among the various bureaus and offices in their respective departments, whenever they should find it necessary and proper to do so.<sup>14</sup>

**Non-Financial Bureaus.** Since its establishment in 1789, a large number of bureaus and subdivisions have been created in the Treas-

<sup>13</sup> 9 Stat. L., 629, 630.

<sup>14</sup> 9 Stat. L., 395, 396; 11 Stat. L., 206, 220; 10 Stat. L., 189, 211. Mention should be made of the establishment of the Independent Treasury by act of August 6, 1846. This act provided for a physical treasury at Washington, under the immediate direction of the Treasurer of the United States, and six branch or sub-treasuries at Philadelphia, New Orleans, New York, Boston, Charleston, and St. Louis, under the direction of assistant treasurers or the treasurers of the mints. The immediate management and control of the independent treasury system was exercised by the Treasurer of the United States, but the Secretary of the Treasury was accorded general supervisory powers which later were exercised through the Division of Public Moneys, set up in the Secretary's office in 1875. 9 Stat. L., 59. Cf. Kinley, *The independent treasury of the U. S.*, 40-42, 82 (1892).

ury Department which had no special relation to finance administration. "The Treasury Department," says Professor Fairlie, "seemed to be a sort of dumping ground for any bureau which did not clearly belong to one of the existing departments."<sup>15</sup> Some of these bureaus were later transferred to other departments, particularly the Interior Department and the Department of Commerce and Labor, but a considerable number still remain under the general supervision of the Secretary of the Treasury. As has been noted in the organization of the State and War departments, many of the bureaus established in the Treasury Department by statutory enactment were first organized by administrative regulation or executive order. Important duties were imposed by Congress upon the Secretary of the Treasury, or upon the President, who placed them under the supervision of that officer, for the performance of which no additional administrative agency was created. Consequently, sub-divisions were set up by the Secretary within the department in charge of an officer or clerk already in the employ of the department, which later were more definitely organized by legislative enactment.

*General Land Office.* The first, and probably the most important, of these miscellaneous, non-financial bureaus to be established in the Treasury Department was the General Land Office, created by act of April 25, 1812. Prior to the passage of this act, duties with respect to the disposition of the public domain had been performed by several administrative officers. The act establishing the Treasury Department vested the management of the sales of public lands in the Secretary of the Treasury. The act of May 18, 1796, relative to the sale of public lands in the Northwest Territory, authorized the President, on final certificate through the Secretary of State, to grant patents for lands, to be countersigned by the Secretary of State and recorded in his office. This act was amended on May 10, 1800, whereby such patents were to be granted on the final certificate through the Secretary of the Treasury. By act of March 26, 1804, the transmission of patents to the purchasers of public lands was intrusted to the Register of the Treasury.<sup>16</sup>

<sup>15</sup> Fairlie, National administration of the U. S., 95 (1905).

<sup>16</sup> 1 Stat. L., 65, 66; 464, 468; 2 Stat. L., 73, 76; 277, 282; 716.

The act of 1812 provided for the appointment by the President, with the consent of the Senate, of a Commissioner of the General Land Office, who was to superintend, execute, and perform, under the direction of the Secretary of the Treasury, "all such acts and things touching or respecting the public lands of the United States, and other lands patented or granted by the United States, as have heretofore been directed by law to be done or performed in the office of the Secretary of State, of the Secretary and Register of the Treasury, and of the Secretary of War, or which shall hereafter, by law, be assigned to the said office." The clerical force which had performed the duties relating to public lands in the offices of the department secretaries named in the act, were transferred to the General Land Office. The appointment of a chief clerk by the Commissioner was also authorized.<sup>17</sup>

*Reorganization of General Land Office.* A thorough reorganization of the General Land Office, made necessary by the increased amount of work performed in that bureau, was effected by act of July 4, 1836, passed upon the urgent recommendation of the Commissioner. This act, in addition to the office of Commissioner, provided for the appointment by the President, with the consent of the Senate, of a recorder, a solicitor, principal clerks of public lands, private land claims, and surveys, and a secretary; the latter, under the direction of the President, to sign, in his name, all patents for lands sold or granted under the authority of the United States. In addition to the bureaus expressly provided for in this act, within the General Land Office, several other bureaus and divisions were created by departmental order, in charge of a clerk; namely, military bounty lands, accounting and bookkeeping, pre-emption claims, and miscellaneous. The principal clerk of public lands was authorized to act as chief clerk.<sup>18</sup>

<sup>17</sup> 2 Stat. L., 716, 718. No evidence has been found of the creation, by departmental regulation, of a separate land office or bureau, in charge of a clerk, in any of the three departments concerned with the disposition of public lands, prior to 1812, although the work in connection therewith was, no doubt, assigned to a particular clerk or clerks in those departments.

<sup>18</sup> 5 Stat. L., 107. Cf. 24 Cong. 1 sess. (1836-37), H. ex. doc. 187, 1-8; 25 Cong. 2 sess. (1837-38), S. ex. doc. 436, 40-46. A Bureau of Distribution of Lands for Internal Improvements among New States and Territories was established by administrative regulation following the passage of the act of September 4, 1841, which granted 500,000 acres of land for internal improvements to certain states. Cf. Mayo, *op. cit.*, 213.

A provision in the act of 1836, whereby the direction and control over the work of the Commissioner was to be exercised by the President instead of by the Secretary of the Treasury, led to the question as to whether the General Land Office was still a part of the Treasury Department, or whether it constituted a distinct executive department of the public domain, coördinate with the other departments. The establishment of several bureaus in the General Land Office seemed to support the latter conclusion, although the chiefs of those bureaus had no higher title than that of "principal clerk." An opinion rendered by Attorney General Butler on the day that the act of 1836 was passed, held that the General Land Office was still a part of the Treasury Department, and subject to the direction of the Secretary of the Treasury.<sup>19</sup>

*General Land Office Transferred to Department of the Interior.* The office of Solicitor of the General Land Office was abolished by act of June 12, 1844, which directed that the duties of that officer should thereafter be performed by the Recorder, or by such other person or persons employed in the General Land Office, as the Commissioner should from time to time direct.<sup>20</sup> The General Land Office was transferred to the Department of the Interior upon the establishment of that department in 1849.

*Lighthouse Service.* Another bureau organized within the Treasury Department, although having no relation to the administration of fiscal affairs, was that of the Lighthouse Establishment. The history of the Lighthouse Service of the United States is almost coincident with that of the United States. It became an administrative unit of the national government by act of Congress approved

<sup>19</sup> 3 Op. Atty. Gen., 137. The Attorney General called attention to the fact that only those provisions of the act of 1812 as were inconsistent with the act of 1836, were thereby repealed. ". . . I am of the opinion that the clause of the act of 1812, which makes the General Land Office a branch of the Treasury Department, and thereby subjects it to the general superintendence of the President, through the head of that department, is one of those provisions which are not inconsistent with the new bill, and which, therefore, are not repealed." To prevent all difficulty, however, he suggested that the President authorize and direct the Secretary of the Treasury, by executive order, to superintend and direct, in a manner heretofore accustomed, and with the usual subordination to the President, the general business of the Land Office. A detailed history of this service may be found in Institute for Government Research, *The General Land Office*, Ch. I (1923).

<sup>20</sup> 5 Stat. L., 662.

August 7, 1789, which accepted title to, and joint jurisdiction over, the eight lighthouses which had been established and maintained by the maritime colonies, and provided that all expenses for the maintenance of such lighthouses or other aids to navigation, after August 15, 1789, should be defrayed out of the treasury of the United States. Since that date all jurisdiction over and maintenance of lighthouses and aids to navigation for the protection of commerce have been in the national government.<sup>21</sup>

The control and administrative supervision of the Lighthouse Service was at the outset vested in the Secretary of the Treasury. Until 1820 it was under either the direct control of the Secretary himself or the Commissioner of the Revenue, who, from 1792 to 1802, inclusive, and again from 1813 to 1820, exercised immediate jurisdiction over this service. Upon the discontinuance, by the President, of the office of Commissioner of the Revenue on July 1, 1820, under authority of an act approved December 23, 1817, the duty of superintending and managing the Lighthouse Establishment was assigned to the Fifth Auditor.<sup>22</sup> Although the service was administered by the latter officer until 1852, numerous proposals were made to Congress recommending changes in the organization of the Lighthouse Establishment. The Secretary of the Treasury, in a report to Congress submitted on December 5, 1834, relative to the reorganization of the Treasury Department, proposed that the duties performed by the Fifth Auditor in connection with the management of the Lighthouse Establishment be transferred to the Second Comptroller. The title of the latter, who was also to superintend the collection of custom duties, was to be changed to "Commissioner of Customs." Special reports submitted by Mr. P. G. Washington on January 6, 1837, relative to simplifying the system of public accounts, and by Mr. I. W. P. Lewis on February 24, 1843, with respect to the condition of lighthouses and other aids to navigation, recommended that the Fifth Auditor be relieved of his duties in relation to the Lighthouse Service, and that a competent engineer be appointed by the Secretary of the Treasury, who should regulate, under his direction, the

<sup>21</sup> 1 Stat. L., 53.

<sup>22</sup> Organization and law of the department of commerce and labor, 65 (1904); 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 137-38.

details of the lighthouse system and report annually on the condition of the Lighthouse Establishment.<sup>23</sup>

In 1845 two naval lieutenants were sent abroad to procure information which might tend to the improvement of the lighthouse system of the United States. In their report submitted on June 22, 1846, these officers recommended: (1) The reorganization of the Lighthouse Establishment, by the appointment of an engineer, an optician, and a proper number of district superintendents, to assist the General Superintendent of Lights (Fifth Auditor), under the direction and control of the Secretary of the Treasury; (2) the appointment of a commission, consisting of the General Superintendent, two naval officers, the Superintendent of Coast Survey, one military engineer and one topographical engineer, with a junior naval officer as secretary, to conduct an examination of the Lighthouse Establishment, under the direction of the Secretary of the Treasury. In his annual report on the state of the finances in 1847, the Secretary of the Treasury proposed the establishment of a Lighthouse Board, to consist of the Fifth Auditor, the Superintendent of the Coast Survey, two naval officers, and two officers of engineers, which should have superintendence and control over the Lighthouse Service.<sup>24</sup>

No action was taken by Congress relative to the above reports until 1851, when, by act of March 3, the Secretary of the Treasury was authorized to cause a board to be convened, to be composed of two naval officers, two officers of engineers, and a civil officer of high scientific attainments, such as might be under the orders, or at the disposition of the Treasury Department, and a junior officer of the navy to act as secretary to said board, whose duty it should be, under instruction from the Treasury Department, to inquire into the condition of the Lighthouse Establishment, and make a general detailed report and program to guide legislation in extending and improving the existing system of construction, illumination, inspection, and superintendence.<sup>25</sup>

The board appointed by the Secretary of the Treasury, pursuant to this act, submitted a report on January 30, 1852, in which it

<sup>23</sup> 23 Cong. 2 sess. (1834-35), S. ex. doc. 6, 8; 24 Cong. 2 sess. (1836-37), H. ex. doc. 71, 9; 27 Cong. 2 sess. (1842-43), H. ex. doc. 183, 2.

<sup>24</sup> 29 Cong. 1 sess. (1845-46), H. ex. doc. 222, 8-24; 30 Cong. 1 sess. (1847-48), H. ex. doc. 6, 19.

<sup>25</sup> 9 Stat. L., 627, 629.

returned a severe indictment against the whole Lighthouse Service, charging a lack of proper supervision and management. This board recommended, among other things, "the organization of a Lighthouse Board, to be composed of scientific civilians, army and navy officers, to be charged, by law, with the entire management of the Lighthouse Establishment of the United States." Replying to this report, the Fifth Auditor and Superintendent of the Lighthouse Establishment, Mr. Pleasonton, contended that a board, however composed, would not be the proper authority to which to commit the superintendence of the Lighthouse Establishment; that a single officer attached to the Treasury Department, who should be responsible for the welfare of the service, and the proper application of the moneys appropriated for its support, would insure the best attention to its wants, and the most economical expenditure of the public moneys.<sup>26</sup>

*Creation of Lighthouse Board.* Congress, however, followed the recommendation made by the board. The administrative system of the service was completely reorganized by act of August 31, 1852, and the immediate direction and control over it assigned to a "Lighthouse Board," composed of the Secretary of the Treasury as president, three naval officers, three engineer officers of the army, and two civilians of high scientific attainments, all appointed by the President. The appointment of a chief clerk in the office of the Lighthouse Board was authorized by act of March 3, 1853. Such a board continued at the head of the Lighthouse Establishment until 1910, being transferred to the Department of Commerce and Labor in 1903.<sup>27</sup>

*Coast Survey.* A third bureau organized within the Treasury Department, which had no connection with finance administration, was the Coast Survey—the first scientific bureau of the national government. By act of February 10, 1807, the President was authorized to cause a survey of the coast of the United States to be made, and to cause proper and intelligent persons to be employed for that purpose. Mr. F. R. Hassler, an eminent scientist of Swiss birth, was designated to formulate plans to carry out this work, but the organization of the survey under the Treasury

<sup>26</sup> 32 Cong. 1 sess. (1851-52), H. ex. doc. 55, 14; 32 Cong. 1 sess., H. ex. doc. 88, 7.

<sup>27</sup> 10 Stat. L., 112, 119; 189, 211.

Department was delayed until 1816. The work had just begun when, by act of April 14, 1818, Congress repealed so much of the statute of 1807 as authorized the employment of other than army and navy officers in the survey.<sup>28</sup>

No surveys were made under the War Department and the results obtained in the survey made under the Navy Department were unsatisfactory. Congress revived the law of 1807, with somewhat extended scope, by act of July 10, 1832, and the work was again placed under the Treasury Department. Operations had hardly been resumed, under the direction of Mr. Hassler, as Superintendent of the Coast Survey, before President Jackson on March 11, 1834, directed that the Survey be transferred to the Navy Department. Again the work proceeded so unsatisfactorily that it was retransferred by the President to the Treasury Department on March 26, 1836.<sup>29</sup>

Again prompted by suggestions of the expediency of a retransfer of the Survey to the Navy Department, Congress provided, by act of March 3, 1843, that the President should organize a board to make an intelligent and efficient inquiry for the development of a plan of permanent organization for the Survey. The plan for the organization of the Survey, as submitted by this board, provided for a superintendent at the head of the service, which should remain in the Treasury Department. The report of the board was approved by the President, and the Coast Survey remained in the Treasury Department until 1903, when it was placed under the supervision of the Secretary of Commerce and Labor.<sup>30</sup>

*Office of Construction of Standard Weights and Measures.* Although the Constitution vests the national government with power to "fix the standard of weights and measures," and the adoption of such a standard was successively recommended by Washington, Jefferson, Madison, and John Quincy Adams, no positive action was taken by Congress until May, 29, 1830, when a Senate resolution was passed directing the Secretary of the Treasury to have an examination made of the weights and mea-

<sup>28</sup> 2 Stat. L., 413; 3 Stat. L., 425. Cf. Organization and law of the department of commerce and labor, 97.

<sup>29</sup> 4 Stat. L., 570. Cf. 31 Cong. 2 sess. (1850-51), S. ex. doc. 36, 1-15. Institute for Government Research, The Coast and Geodetic Survey, Ch. I (192).

<sup>30</sup> 5 Stat. L., 630, 640. Cf. 28 Cong. 2 sess. (1844-45), H. ex. doc. 164, 1-32.

sures in use at the principal custom-houses. An examination was made in accordance with this resolution which revealed large discrepancies and, as a consequence, the Secretary of the Treasury directed that standards be adopted by the Treasury Department, and that copies be made and distributed to the various custom-houses. By joint resolution of June 14, 1836, Congress directed that the Secretary of the Treasury should furnish each state with copies of these standards.<sup>31</sup>

Professor Hassler, Superintendent of the Coast Survey, was directed by the Secretary of the Treasury in 1831 to begin the construction of such standards. Thereafter, the Superintendent of the Coast Survey also acted as Superintendent of the Office of Construction of Standard Weights and Measures, until the establishment in 1901 of the National Bureau of Standards.<sup>32</sup>

*Revenue Marine Service.* The Revenue Marine Service, while instituted primarily to aid in the collection of customs duties, soon came to perform such a variety of duties that it may be classified more properly with the miscellaneous bureaus of the Treasury Department than with those mainly concerned with fiscal affairs. The Revenue Marine Service had its origin in an act of August 4, 1790, which empowered the President to build and equip "so many boats or cutters, not exceeding ten, as may be necessary to be employed for the protection of the revenue." The necessity for the creation of such a service had previously been pointed out by Alexander Hamilton, in a communication addressed to Congress on April 22, 1790. Although Hamilton had recommended that the officers of the service "be commissioned officers of the Navy," the act of 1790 provided that they should "be deemed officers of the customs." Consequently the Revenue Marine Service became a part of the Treasury Department, under the immediate control and management of the Secretary of that department. An act of March 2, 1799, more definitely organizing and regulating the service, provided that, whenever the President so directed, the revenue cutters should coöperate with the Navy, during which time they should be under the direction of the Secre-

<sup>31</sup> 21 Cong. 2 sess. (1830-31), S. ex. doc. 74, 1-2; 5 Stat. L., 133. Cf. Organization and law of the department of commerce and labor, 413-14.

<sup>32</sup> 28 Cong. 2 sess. (1844-45), S. doc. 149, 1-4.

tary of the Navy and the expenses thereof should be defrayed by the Navy Department.<sup>33</sup>

Several efforts were made prior to 1860 looking toward the transfer of the Revenue Marine Service from the Treasury Department to the Navy Department, none of which received congressional sanction.<sup>34</sup> The work of administering the service was performed until 1843 by the First Comptroller of the Treasury, in conjunction with his duties respecting the supervision of customs administration. In connection with the recommendation made by the Secretary of the Treasury in 1834 for the establishment of the office of Commissioner of Customs, it was proposed to transfer the general superintendence of the revenue boats and the whole revenue cutter service to that officer. No change was effected in the organization of the service, however, until 1843, when the Secretary of the Treasury, with the approval of the President, directed an officer of the Revenue Marine Service to come to Washington and take charge of a Revenue Marine Bureau in the Treasury Department. With respect to this action, Secretary of the Treasury Spencer said: "In the establishment of a bureau having charge of this branch of public service, great reform has been produced in the expenditure as well as discipline of the service, the result of which will be to lessen very materially the expenditure of each vessel, as well as to insure a faithful discharge of the duties." This arrangement seems to have been discontinued in 1849, as the last report submitted to the Secretary of the Treasury by the officer in charge of the Revenue Marine Bureau is dated January, 1849. There is no

<sup>33</sup> I Stat. L., 145, 175; 627, 700. Cf. American State Papers, Finance, I, 47. Regulations for the government of the Revenue Marine Service, later known as the Revenue Cutter Service, were issued from time to time under authority of the general executive power of the President. These regulations were unique in the respect that they established a system of naval discipline, including a code of penalties and a system of procedure, without congressional action or clear constitutional authority. "No other regulations," says Lieber, "have ever undertaken to go to this extreme and it may well be doubted whether the executive power can legally be carried so far." The Secretary of the Treasury was expressly authorized to issue such regulations by act of May 26, 1906.—34 Stat. L., 200. Cf. Lieber, Remarks on the army regulations and executive regulations in general, 46 (1898).

<sup>34</sup> 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 300-04.

available evidence to indicate that any further attempt was made to provide a separate bureau or division for the service until 1869.<sup>35</sup>

*Collection of Statistics on Foreign Commerce.* The organization of the Treasury Department for the discharge of its duties with respect to the collection of statistics, the erection and supervision of marine hospitals, and the superintendence of the Steamboat-Inspection Service, was largely the result of administrative regulation. By act of Congress approved February 10, 1820, the regular collection and publication of statistics of the foreign commerce of the United States was undertaken. The Register of the Treasury was directed to prepare such a report, and a Division of Commerce and Navigation was organized in the Register's Office to prosecute the work, in charge of a clerk in that office. Annual reports on commerce and navigation were prepared by this division until the establishment of a Bureau of Statistics in 1866.<sup>36</sup>

On January 29, 1844, a select committee of the House of Representatives was appointed "to inquire into the expediency of establishing a Bureau of Statistics and Commerce in connection with the Secretary of the Treasury." This committee submitted a report on March 8, 1844, in which it recommended the establishment of such a bureau in the Treasury Department. A step was taken by Congress in the direction of the creation of such a bureau, by the passage of a joint resolution on June 15, 1844, authorizing the Secretary of the Treasury to transfer from any office in the Treasury Department three clerks to collect, arrange, and classify, under his direction, statistics on agriculture, manufactures, domestic trade, currency, and banks of all the states and territories of the United States. The appointment of a clerk especially qualified to prepare statistical compilations was authorized by act of June 17, 1844.<sup>37</sup>

In his first report transmitting statistical information in accordance with the resolution of 1844, submitted to Congress on January 6, 1845, the Secretary of the Treasury recommended the establishment of a permanent statistical bureau, in charge of a chief clerk, appointed by the head of the Treasury Department and sub-

<sup>35</sup> 23 Cong. 2 sess. (1834-35), S. ex. doc. 6, 8; 28 Cong. 1 sess. (1843-44), H. ex. doc. 45, 1-3; 30 Cong. 2 sess. (1848-49), H. ex. doc. 52.

<sup>36</sup> 3 Stat. L., 541. Cf. Organization and law of the department of commerce and labor, 103; Parmelee, The statistical work of the federal government, *Yale Review*, XIX, 300 *et seq.* (November, 1910).

<sup>37</sup> 28 Cong. 1 sess. (1843-44), H. Rep. 301, 1-5; 5 Stat. L., 719; 681, 684.

ject to his superintendence and control. A similar recommendation was made in the second report submitted on March 25, 1846. The failure of Congress to act upon these recommendations resulted in the discontinuance of this work until the establishment of a statistical bureau in 1866.<sup>28</sup>

*Marine Hospital Service.* Provision for the relief of sick and disabled seamen was first made by act of July 16, 1798, which directed the collectors of customs to receive monthly payments, retained by the masters of vessels out of the wages of their seamen, and to make quarterly returns of the sums thus collected. This fund was to be expended by the President for the relief and maintenance of seamen in private hospitals. Any balance remaining was to be used in the purchase of buildings and grounds and the erection of hospitals for the accommodation of sick and disabled seamen. The President was further authorized to appoint directors of marine hospitals at such ports as he might deem proper. The provisions of this act were extended to officers, seamen, and marines in the United States Navy by act of March 2, 1799. All unexpended sums collected under these acts, together with moneys collected thereafter, were directed by act of May 3, 1802, to be placed in a general fund, which the President was authorized to use for the benefit and convenience of sick and disabled American seamen.<sup>29</sup>

No direct evidence is available as to the exact organization established for the administration of the Marine Hospital Service. Early in the history of the fund, the President seems to have delegated all the business relating to this service to the Secretary of the Treasury. The office of director, created by act of 1798, devolved upon the collectors of customs at the various ports of entry, and the immediate officers of the hospitals received their

<sup>28</sup> 28 Cong. 1 sess. (1844-45), H. ex. doc. 35, 4; 29 Cong. 1 sess. (1845-46), H. ex. doc. 171, 2; 14 Stat. L., 328, 331 (August 10, 1866).

<sup>29</sup> 1 Stat. L., 605; 729; 2 Stat. L., 192. An act approved February 26, 1811, establishing navy hospitals, directed that all moneys thereafter collected from officers, seamen, and marines of the Navy, under authority of the act of 1799, together with any unexpended balance in the marine-hospital fund derived from such source, should be paid into a fund for the erection and maintenance of navy hospitals, to be administered by a board, composed of the Secretaries of the Navy, Treasury, and War. 2 Stat. L., 650.

authority from these two sources. Secretary Gallatin, in a circular issued on April 19, 1809, authorized the collectors to fix all rules for the government of marine hospitals in their respective districts. Secretary Walker, on the other hand, himself issued a code of regulations governing their conduct, in November, 1848.<sup>40</sup>

Under authority of an act approved March 3, 1849, two physicians in charge of marine hospitals were appointed "to collect facts in relation to marine hospitals and the marine hospital fund." This report, which was submitted to the Senate on January 6, 1851, recommended the establishment of a marine hospital bureau in the Treasury Department, in charge of a chief surgeon, who should issue regulations governing marine hospitals and disburse the marine hospital fund, under the direction of the Secretary of the Treasury. This recommendation failed to effect any immediate change in the administration of the service, but it was followed to a considerable extent in the act of June 29, 1870, establishing the office of Supervising Surgeon General of the Marine Hospital Service.<sup>41</sup>

*Steamboat-Inspection Service.* The Steamboat-Inspection Service had its beginning in an act of July 7, 1838, which provided for the inspection of passenger vessels propelled by steam and the issuance of a license or certificate of inspection to such vessels as were found to meet all requirements necessary for the safety of passengers on board. Under this act the United States district judges were empowered to appoint inspectors of hulls and boilers in their respective districts and the Treasury Department was given general supervision of the service. The service was reorganized by act of August 30, 1852, which provided for the appointment of nine supervising inspectors, by the President, with the consent of the Senate. These supervising inspectors were directed to meet as a board once a year to establish rules and regulations for the uniform administration of the inspection laws, and to assign to each of their number the limits of the territory over

<sup>40</sup> 31 Cong. 2 sess. (1850-51), S. ex. doc. 14, 5, 27.

<sup>41</sup> *Ibid.*, 30. Reference is made in this report to a "clerk of marine hospitals" in the Treasury Department, which would indicate that a clerk had been definitely assigned to that work by the Secretary of the Treasury.—*Ibid.*, 9. See Institute for Government Research, *The Public Health Service*, Ch. I (1923).

which he should exercise supervision and control. Local inspectors of hulls and boilers were to be appointed for certain ports specifically enumerated in the act, subject to the approval of the Secretary of the Treasury, by a commission consisting of the supervising inspector in charge of the district, the judge of the United States district court, and the collector of customs.<sup>42</sup>

In addition to approving the appointment of local inspectors, the Secretary of the Treasury was authorized by the act of 1852 to receive reports from the Board of Supervising Inspectors, to inquire into the operation of the inspection laws and to make recommendations to Congress relative to the improvement of the service. Accordingly a personal agent was appointed by the Secretary of the Treasury to collect information as to the work of the service and to attend the meetings of the Board of Supervising Inspectors. The reports of this officer, together with the annual reports of the proceedings of the board, furnished the Secretary with information as to the needs of the service upon which to base his recommendations to Congress.<sup>43</sup>

While thus giving the Secretary of the Treasury a certain amount of indirect supervision over the work of the Steamboat-Inspection Service, the act of 1852 failed to place the service definitely under the direction of the Treasury Department, without which the necessary and proper supervision and control could not be exercised. This defect was clearly pointed out by the special agent of the Treasury Department in his reports to the Secretary of the Treasury. In a report dated November 6, 1855, that officer emphasized the need of a permanent head for the service, located in Washington, to be directly responsible either to the President or to the head of the Treasury Department. The need for an administrative head of the service was not met, however, until the creation of the office of Supervising Inspector General in 1871.<sup>44</sup>

**Distinctive Features in Organization.** The foregoing description of the development within the Treasury Department effectively

<sup>42</sup> 5 Stat. L., 304; 10 Stat. L., 61.

<sup>43</sup> 33 Cong. 2 sess. (1853-54), S. ex. doc. 2, 399.

<sup>44</sup> 34 Cong. 1-2 sess. (1855-56), S. ex. doc. 2, 427. A Revenue Marine and Steamboat-Inspection Division had been created in 1869 in the immediate office of the Secretary of the Treasury.—62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 313. See Institute for Government Research, *The Steamboat-Inspection Service*, Ch. I (1922).

illustrates the two methods used, in varying degrees, to organize the executive departments of the national government. The first, whereby Congress exercises its authority not only to designate how the department shall be organized for the performance of its work, but also to set down in detail the duties of administrative officers, in the performance of which they are controlled primarily by legislative mandate and not by the direction of the head of the department, was followed to a large extent in establishing the fiscal bureaus of the Treasury Department. There is no question that the controlling factor which led Congress to adopt this method, in providing for the internal organization of the department, was the fear of one-man power in control of finance administration, and the determination to safeguard the public treasury against the danger of dishonest officers. The second method, whereby Congress imposes certain duties upon an administrative department, but leaves the organization for the performance of such duties to be fixed by regulations or orders issued by the President or the head of the department, was adopted in the creation of the non-fiscal services of the Treasury Department. The permanent organization of practically all of the non-financial or miscellaneous bureaus in the Treasury Department, by legislative enactment, was effected only after repeated recommendations had been submitted to Congress by administrative officers, and temporary bureaus or divisions had been created by administrative regulation.<sup>45</sup>

The organization of the Treasury Department also furnished two examples, in addition to certain *ex officio* commissions of which the head of that department was a member, of administrative boards charged with the direction and control of administrative

<sup>45</sup> The Secretary of the Treasury was a member of several administrative commissions and boards which were not under the jurisdiction of the Treasury Department, and most of which were temporary in character. Mention has been made of the commission appointed to hear and decide claims relative to the "Yazoo Lands," and of the Board of Commissioners of Navy Hospitals. Possibly the most important commission of which the Secretary of the Treasury was a member was that established by act of May 8, 1792, known as the "Commissioners of the Sinking Fund." The duties and powers of this commission were transferred to the Secretary of the Treasury by act of July 4, 1836.—1 Stat. L., 281, 282; 5 Stat. L., 112, 115; *Supra*, 118n, 157n.

services, namely, the Lighthouse Board and the Board of Supervising Inspectors of the Steamboat-Inspection Service. The powers of the latter, with respect to the administrative supervision of the Steamboat-Inspection Service, were transferred to the Supervising Inspector General, upon the establishment of that office in 1871, but the Lighthouse Board continued as the administrative head of the Lighthouse Establishment until 1910.

## CHAPTER VII

### THE DEPARTMENT OF THE NAVY

**Organization Prior to 1815.** The establishment of a Navy Department in 1798, as has been pointed out, was hastened by the enlargement of the United States Navy in preparation for armed hostilities with France, which made necessary a more adequate provision for the administration of naval affairs. The act creating this department provided for a chief officer, to be called the Secretary of the Navy, who should execute orders from the President relative to all matters connected with the naval establishment; a principal clerk, and such other clerks as the head of the department should deem necessary. No provision was made for the creation of bureaus or sub-divisions in the department, except such as might be set up by administrative regulations, in charge of a clerk in the department. In tracing the development of administrative organization within the Navy Department, it seems advisable to distinguish between those agencies directly concerned with the construction, equipment, and operation of the navy proper, and those dealing with subsidiary matters, such as the superintendence of the naval academy, the naval hospitals, and the naval observatory, and the administration of the navy and privateer pension funds.

Prior to 1815, both the military and civil duties connected with the administration of the navy were performed under the immediate direction of the Secretary. "Until the close of the War of 1812," says Mahan, "the Secretary in person . . . was the naval administration. He no doubt had assistants and obtained assistance, technical and military, from experts of both classes; but function had not yet differentiated into organization, and he not only was responsible, but had to give personal attention to various and trivial details of most diverse character, which overburdened him by their mass, and prevented concentration of attention upon the really great matters of his office."<sup>1</sup>

<sup>1</sup> Mahan, Naval administration and warfare, 32 (1908). The Purveyor of Public Supplies, an officer of the Treasury Department, was required

As early as January 12, 1801, Secretary of the Navy Stoddert, in a report submitted to Congress, declared that the business of the Navy Department embraced too many objects for the superintendence of one person, however gifted, and recommended the appointment of a board, consisting of three or five experienced navy officers, to superintend, in subordination to the head of the department, such parts of the duties connected with naval administration as nautical men were best qualified to understand and to direct.<sup>2</sup> No effort was made by Congress, however, to provide assistance for the Secretary of the Navy until after the war with Great Britain in 1812, which served to emphasize the need for a group of professional advisers to aid that officer in the proper discharge of his duties.

In obedience to a Senate resolution of March 18, 1814, Secretary of the Navy Jones proposed that the President be authorized to designate three officers of the navy and two other persons skilled in naval affairs, to constitute a Board of Inspectors of the Navy. Each member of this board was to discharge individually certain specific duties assigned to him by the head of the department, and the board as a group was to exercise general superintendence over the work of the department, subject to the direction of the Secretary. He also recommended the appointment of a naval constructor and a paymaster of the navy. On January 9, 1815, the Naval Committee of the House reported favorably on the proposal, submitting letters from the captains of the navy, all of which approved the general outline of organization recommended. Two important changes in the details of the plan were suggested, however, which were later incorporated in the reorganization act passed by Con-

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by act of July 16, 1798, to execute orders from the Secretary of the Navy, relative to procuring naval stores and supplies. This office was discontinued, however, by act of March 28, 1812. Thereafter contracts and purchases were made by the various navy agents, appointed by authority of an act of March 27, 1804, under the immediate direction of the Secretary of the Navy. The latter suggested, in a report submitted to the House of Representatives on February 2, 1813, the creation of the office of Naval Purveyor to relieve the Secretary of details connected with forming contracts, making purchases, and controlling navy agents. No action was taken, however, on this proposal. The office of Agent for the Navy Department was created by act of July 10, 1832. 1 Stat. L., 610; 2 Stat. L., 297; 696, 697; 4 Stat. L., 569. Cf. American State Papers, Naval Affairs, I, 285; 27 Cong. 2 sess. (1841-42), S. ex. doc. 215, 1-2.

<sup>2</sup> American State Papers, Naval Affairs, I, 75.

gress. It was the opinion of several of the navy captains that a board of three members, all of whom should be naval officers, would be preferable to a board of five members, two of whom were to be chosen outside of the personnel of the navy. The division of duties between the respective members of the board was considered unwise by one officer, who held that they would be better administered under the general direction of the board as a whole.<sup>3</sup>

**Board of Navy Commissioners.** By act of February 7, 1815, Congress authorized the President to appoint, with the consent of the Senate, three naval officers who should constitute a Board of Navy Commissioners, to be attached to the office of the Secretary of the Navy, and to discharge, under his direction, all ministerial duties of the Secretary's office, relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment. This board was empowered to prepare rules and regulations to secure uniformity in the several classes of vessels and their equipment, for repairing and refitting them, and for securing proper responsibility among subordinate officers—such regulations, when approved by the President, to be respected and obeyed until revoked by the same authority. The board was further authorized to elect its own secretary to keep a record of its proceedings, which should be open to the inspection of the President and the Secretary of the Navy at all times. The board was required by the act to furnish estimates of expenditures for the different branches of the service, and other information, upon the request of the Secretary of the Navy.<sup>4</sup>

While the system thus inaugurated placed at the immediate disposal of the Secretary of the Navy a board of naval experts to advise him with respect to matters of naval policy, it did not furnish the requisite means for efficiently administering the purely civil duties imposed upon that officer relative to the construction, equipment, and repair of vessels, and the procurement of naval supplies. In a letter addressed to the chairman of the House Committee on Naval Affairs, dated January 21, 1830, Secretary of the Navy Branch submitted a plan for the reorganization of

<sup>3</sup> *Ibid.*, 320, 354.

<sup>4</sup> 3 Stat. L., 202.

the Board of Navy Commissioners, in an effort to remedy this defect. It was proposed to vest the President with authority to distribute among the members of this board the duties assigned to it by the act of 1815, as first suggested by Secretary Jones in 1814, in an effort to promote the dispatch of public business and to secure better responsibility for its proper discharge. In support of the propriety of this proposed division of the labors of the board, the Secretary contended that it would secure to each class of designated duties the undivided attention of the officer who should be selected to superintend them; that this exclusive devotion of his time and talents to one branch, or single train of services, would give him a more intimate knowledge of their interests and means of accomplishment; and that it would secure a stronger individual responsibility for their faithful discharge. "It is not proposed," said Secretary Branch, "by assigning to individual enterprise and exertion the performance of the specific duties recited in the bill to deprive the officers so employed of the power of acting in their capacity as a board, whenever it may, in the opinion of the Secretary of the Navy, be necessary for them so to act, to establish general principles in relation to the system of construction of vessels-of-war, their armament, equipment, preservation, or any other points connected with the great general interests of the Navy, on which he may desire their united counsel and information."<sup>5</sup>

**Proposed Reorganization.** A plan for the reorganization of the Board of Navy Commissioners, similar to that recommended to Congress by Secretary Branch, had been previously proposed by the board itself, in a report submitted to the Secretary of the Navy on November 23, 1829. It suggested a subdivision of the duties imposed upon the board by the act of 1815, leaving to the board, as a collective body, the determination of general principles with respect to naval administration.<sup>6</sup> The Secretary of the Navy further proposed, in a communication addressed to the chairman of the Senate Committee on Naval Affairs, dated January 26, 1830, the appointment of a Surgeon General of the Navy, to be at the head of a Medical Bureau in the Navy Department, with a view to

<sup>5</sup> American State Papers, Naval Affairs, III, 492; 21 Cong. 1 sess. (1829-30), S. ex. doc. 1, 41.

<sup>6</sup> 21 Cong. 1 sess., S. ex. doc. 1, 299 *et seq.*

securing a more uniform and systematic attention to the preservation of the health of the persons employed in the naval service of the United States.<sup>7</sup> The recommendations of the Secretary and the Board of Commissioners, however, failed to impress upon Congress the need for reorganization.

It was not until almost ten years later that the proposals for reorganization of the Navy Department were renewed. In compliance with a House resolution of February 19, 1839, which directed the Secretary of the Navy to "report a plan for the reorganization of this branch of the public service, adopting as the basis of his plan the division of the duties now performed by the Board of Navy Commissioners, and their assignment to separate bureaus," Secretary Paulding proposed a distribution of the duties of the board into three divisions of construction, supplies, and navy yards, with a naval officer at the head of each. These officers should be considered as a board of counsel when called together by the head of the department, but at all other times, and especially in the exercise of their ministerial functions, the head of each division should be personally charged with all the duties appertaining to it, and held individually responsible for their performance. The Secretary observed that no division of duties and responsibilities appeared to have been contemplated in the act of 1815. "Accordingly," he said "none was made by the head of the department, and the members have always continued to act together as a board, without individual responsibility to the public; although it might appear questionable whether their respective duties could not have been designated by the Secretary of the Navy without contravening either the letter or spirit of the law."<sup>8</sup>

The plan submitted by Secretary Paulding was not strictly in accordance with the instructions of the House resolution, which clearly contemplated the creation of separate and distinct bureaus in the Navy Department. A more logical and concrete proposal was submitted to Congress by his successor, Secretary Upshur, on March 7, 1842. This latter plan called for the creation of seven distinct bureaus in the department, namely, navy yards and docks, construction and repairs, equipment, provisions and stores, ordnance, hydrography, and medicine, with a chief at the head of each,

<sup>7</sup> American State Papers, Naval Affairs, III, 490.

<sup>8</sup> 26 Cong. 1 sess. (1839-40), H. ex. doc. 39, 4-6.

and the office of Judge Advocate General. "These bureaus," said the Secretary, "should be conducted in perfect harmony each with the others; and the heads of them will when necessary, form a council for the Secretary."<sup>9</sup>

**Establishment of Bureaus.** The reorganization of the Navy Department, along the lines suggested by Secretary Upshur, was effected by act of August 31, 1842. The Board of Navy Commissioners was abolished and its powers and duties assigned to five separate bureaus, namely, Navy Yards and Docks, Construction, Equipment and Repairs, Provisions and Clothing, Ordnance and Hydrography, and Medicine and Surgery. The chiefs of these five bureaus were to be appointed by the President, with the consent of the Senate—those in charge of the Bureaus of Navy Yards and Docks, and Ordnance and Hydrography to be selected from captains in the naval service, the Chief of the Bureau of Construction, Equipment, and Repairs to be a skillful naval constructor, and the head of the Bureau of Medicine and Surgery to be chosen from the surgeons in the Navy. No restriction was placed upon the selection of the Chief of the Bureau of Provisions and Clothing. No provision was made in this act for combining the bureau chiefs into an advisory board or council to consult with the Secretary of the Navy on matters of naval policy. All the duties of these five bureaus were to be performed under the authority of the Secretary of the Navy and all orders issued by them were to be considered as emanating from him.<sup>10</sup>

Commenting upon the reorganization of the department thus effected, in his annual report submitted in December, 1842, Secretary Upshur said: "The advantages of this change, in the increased facilities of transacting business, and in the concentration of responsibilities, are manifest and great." The Secretary called attention, however, to what he considered to be a serious defect in the system, namely, the union of two bureaus whose duties were wholly distinct, and which required a wholly different order of qualifications to discharge them. Thus the work of construction and repairs was combined with the work of equipment, and one bureau combined ordnance with hydrography.<sup>11</sup> No further gen-

<sup>9</sup> 27 Cong. 2 sess. (1841-42), H. ex. doc. 167, 1-4.

<sup>10</sup> 5 Stat. L., 579.

<sup>11</sup> 27 Cong. 3 sess. (1842-43), H. ex. doc. 2, 537-38.

eral reorganization of the department was undertaken by Congress, however, until 1862.

**U. S. Marine Corps.** Two more or less separate and distinct organizations were established prior to 1860 under the general supervision of the Navy Department, namely, the Marine Corps and the Navy Engineers. The Marine Corps was first established by act of July 11, 1798, less than two months after the creation of the Navy Department. The major or commandant of the Marine Corps was directed to appoint staff officers, when the Corps was detailed on shore duty, to be taken from the line of subalterns and sergeants. The Corps was placed under the immediate direction of the Secretary of the Navy by the President and the commandant rendered his reports to the head of that department. The rank of Lieutenant Colonel Commandant was created by act of April 22, 1800, and express provision was made in the act of April 16, 1814, for three staff officers to be taken from the line of captains or subalterns, namely, an adjutant, a paymaster, and a quartermaster.<sup>12</sup>

The act of March 3, 1817, fixing the peace establishment of the Marine Corps provided for a Lieutenant Colonel Commandant and three staff officers—adjutant and inspector, paymaster, and quartermaster—to be taken from the line of captains and lieutenants. An act of June 30, 1834, created the rank of Colonel Commandant, but no change was made in the provision for staff officers. The Marine Corps was expressly made subject to the laws and regulations for the government of the navy, except when detached for service with the army by order of the President, and officers of the Marine Corps were forbidden to exercise command over any navy yard or vessel. The staff officers were definitely separated from the line by act of March 2, 1847. Provision was made for an adjutant and inspector, a paymaster, and a quartermaster, with the rank of major. No further legislation affecting the organization of the Marine Corps was passed until 1861.<sup>13</sup>

**Engineer Corps of the Navy.** The Engineer Corps of the Navy was established by act of August 31, 1842, which authorized the Secretary of the Navy to appoint a requisite number of chief en-

<sup>12</sup> 1 Stat. L., 594; 2 Stat. L., 39; 3 Stat. L., 124.

<sup>13</sup> 3 Stat. L., 376; 4 Stat. L., 712; 9 Stat. L., 154.

gineers and assistants for each steam war vessel of the United States. He was also empowered to appoint a skillful and scientific engineer-in-chief to perform such duties as the Secretary of the Navy should require of him, touching that branch of the service. The Engineer Corps was made subject to the regulations of the navy, and the Secretary was directed to prescribe the necessary additional rules for the government of the Engineer Corps. The appointment of the engineer-in-chief and the chief engineers of the navy was vested in the President, with the consent of the Senate, by act of March 3, 1845. An act of August 3, 1861, directed that the engineer-in-chief be appointed from the chief engineers of the navy.<sup>14</sup>

**Boards of Commissioners of Navy Hospitals and Pension Funds; Pension Business Transferred to Commissioner of Pensions.** Mention was made in the preceding chapter of the creation of a marine hospital fund for the relief of sick and disabled merchant seamen by act of July 16, 1798. The provisions of this act were extended to include officers, seamen, and marines in the United States Navy by act of March 2, 1799. This latter act continued in force until February 26, 1811, when Congress, upon the recommendation of the Secretary of the Navy and the House Committee on the Naval Establishment, determined to separate the military from the mercantile marine so far as related to this subject. Accordingly an act was passed to create a separate fund for the erection and maintenance of navy hospitals, under the direction of a Board of Commissioners of Navy Hospitals, which was to be composed of the Secretaries of Navy, Treasury, and War. Express provision was made in this act for the establishment of a permanent asylum for disabled and decrepit navy officers, seamen, and marines, to be governed by rules prescribed by the Secretary of the Navy. The Board of Commissioners of Navy Hospitals was discharged by act of July 10, 1832, and its powers vested in the Secretary of the Navy. Surgeons in the navy were assigned to the asylum and the hospitals as superintendents, reporting until 1832 to the Board of Commissioners, and after that directly to the Secretary of the Navy.<sup>15</sup>

<sup>14</sup> 5 Stat. L., 577; 790, 794; 12 Stat. L., 286.

<sup>15</sup> 1 Stat. L., 605; 729; 2 Stat. L., 650. Cf. American State Papers, Naval Affairs, I, 227; III, 14.

A navy pension fund, under the direction of a Board of Commissioners consisting of the Secretaries of Navy, Treasury, and War, was created by act of March 2, 1799, which directed that the money obtained from the sale of prize vessels should constitute a fund for the payment of pensions to disabled officers and seamen of the navy. By act of March 26, 1804, all moneys accruing or accrued to the United States from the capture of prizes not already paid to the Commissioners of the Navy Pension Fund were directed to be paid to the Treasurer of the United States, who should disburse such funds upon warrants from the Secretary of the Navy and countersigned by the Accountant of the Navy Department. The appointment of a Secretary to the Commissioners of the Navy Pension Fund was also authorized by this act. The powers and duties of the Board of Commissioners were transferred to the Secretary of the Navy by act of July 10, 1832, and from that officer to the Commissioner of Pensions by act of March 4, 1840.<sup>16</sup>

The authorization by Congress, soon after the declaration of war with Great Britain in 1812, of the grant of letters of marque and reprisal, led to the creation of a privateer pension fund by act of June 26, 1812, for the support of persons wounded or disabled in any engagement with the enemy while on board a private armed vessel of the United States, or their widows and orphans in case of death. The Secretary of the Navy was charged with the administration of this fund. In a report submitted to the Secretary of the Navy by the Commissioners of the Navy Hospital and Pension Funds, on December 8, 1831, it was recommended that the management of these two funds, together with the Privateer Pension Fund, be conferred upon one of the departments. Accordingly, by act of July 10, 1832, the Secretary of the Navy was charged with the management of these three funds. All of the pension business of the Navy Department was transferred to the office of the Commissioner of Pensions by act of March 4, 1840.<sup>17</sup>

<sup>16</sup> 1 Stat. L., 709, 716; 2 Stat. L., 293; 4 Stat. L., 572; 5 Stat. L., 369, 370. Prior to the transfer of the pension business of the Navy Department to the Commissioner of Pensions, the Secretary of the Navy had recommended to Congress the appointment of an officer in charge of pensions, aided by a sufficient clerical force, under the direction of the Secretary.—Cf. 26 Cong. 1 sess. (1839-40), H. ex. doc. 39, 6.

<sup>17</sup> 2 Stat. L., 759, 763; 4 Stat. L., 572; 5 Stat. L., 369, 370; 22 Cong. 1 sess. (1831-32), H. ex. doc. 5.

**U. S. Naval Academy.** As early as November 15, 1814, Secretary of the Navy Jones recommended to Congress the establishment of a national naval school to be devoted solely to the instruction of naval affairs. His proposal resembled more the present War College than the Naval Academy, as the student body was not to be limited to young officers or midshipmen. A resolution was introduced in the House of Representatives on March 22, 1816, and approved by that body, which called for the establishment of a naval academy at Washington, and directed the Secretary of the Navy to report a plan to Congress for the establishment of such an academy. There is no available evidence to indicate that the Secretary complied with this request, and no further action was taken by Congress. The importance of establishing a naval academy was emphasized by Secretary Thompson in his annual report for 1822, and again by Secretary Southard in 1825.<sup>18</sup>

In an effort to provide instruction for midshipmen, small naval schools were established at the navy yards in Boston, New York, and Norfolk, in charge of instructors employed by the Secretary of the Navy. Congress appropriated sums for the salaries of such teachers, and also for a number of schoolmasters aboard naval vessels. The small expense connected with the maintenance of these three naval schools was met out of the contingent fund allowed to the Navy Department. A lack of proper organization and discipline, coupled with the fact that attendance at these schools was not made obligatory, detracted greatly from the value of the instruction offered. A bill relative to these naval schools was submitted to Congress by the House Committee on Naval Affairs on January 3, 1834, which required attendance of midshipmen, when not on active duty, and made them subject, while there, to the same regulations as were enforced on shipboard.<sup>19</sup> In spite of the recognized inefficiency of the naval schools, Congress took no action on this report.

On April 23, 1836, three midshipmen and twenty-five naval officers united in a petition to Congress praying for the establish-

<sup>18</sup> American State Papers, Naval Affairs, I, 320; 14 Cong. 1 sess. (1815-16), Annals of Congress, 1238; American State Papers, Naval Affairs, IV, 273; 17 Cong. 2 sess. (1821-22), II. ex. doc. 10, 7; 19 Cong. 1 sess. (1825-26), S. ex. doc. 2, 103.

<sup>19</sup> Benjamin, The U. S. naval academy, 109 *et seq.* (1900). Cf. American State Papers, Naval Affairs, IV, 484-85.

ment of a Naval School. The Senate Committee on Naval Affairs favorably reported to the Senate on May 14, 1836, concerning this petition, but the proposal met defeat on the floor of that body. In 1838, a naval school was organized at the naval asylum for aged seamen, near Philadelphia, with one professor of mathematics and foreign languages in charge. This school was set up entirely under the authority of the Secretary of the Navy. A plan for the organization of the school and its curriculum was submitted to Secretary Henshaw, by the professor in charge, which was approved, and the governor of the asylum was directed by the Secretary to carry it into effect. Before this had been done, however, Secretary Henshaw left office and his successor, Secretary Mason, revoked the order.<sup>20</sup>

It was not until George Bancroft became Secretary of the Navy in 1845 that definite steps were taken to establish a naval academy. At the instance of Secretary Bancroft, an examining board of naval officers, which met at the Naval Asylum School in June, 1845, to examine the midshipmen at that institution, drew up a plan for a naval school. After consultation with various naval officers, it was decided to locate the school at Fort Severn, Annapolis, Maryland. The latter fort was transferred from the War Department to the Navy on August 15, 1845. The plan finally agreed upon for the conduct of the school, which continued in effect until 1850, provided for a corps of professors and instructors, to be selected as far as practicable from the officers of the navy. Midshipmen of the navy were to be attached to the school when not on active duty. A superintendent was to be appointed who, together with the teaching staff, should constitute an academic board to transact the business of the school and decide on the merits of the students. Secretary Bancroft asked Congress for an amount not to exceed \$28,000 to be expended under his direction "for repairs, improvements, and instruction at Fort Severn, Annapolis, Md.," which was voted in the act of August 10, 1846.<sup>21</sup>

A new code of regulations, prepared by the academic board and approved by a committee of naval officers, went into effect on

<sup>20</sup> American State Papers, Naval Affairs, IV, 884, 968. Cf. Benjamin, *op. cit.*, 119-26.

<sup>21</sup> Benjamin, *op. cit.*, 142-68; 9 Stat. L., 97, 100.

July 1, 1850, whereby the name of the school was changed to the United States Naval Academy. The Academy was placed under the supervision of the Chief of the Bureau of Ordnance and Hydrography, but the immediate charge was entrusted to a superintendent who, together with an executive assistant known as the Commandant of Midshipmen and the teaching staff, constituted an academic board, with power to make all regulations for the conduct of the Academy. Although Congress gave statutory recognition to the Naval Academy in appropriating sums for its maintenance beginning in 1846, the first statute definitely organizing the Academy was not passed until 1865.<sup>22</sup>

**The Coast Survey.** The Office of the Coast Survey, in charge of a civilian Superintendent, was transferred from the Treasury Department to the Navy Department, by executive order, on March 11, 1834. The Secretary of the Navy, in his annual report for that year, described the arrangement as a very onerous one, but did not recommend the retransfer of the service to the Treasury Department. Mainly through the efforts of the Superintendent, however, the Coast Survey was returned to the Treasury Department on March 26, 1836. A determined effort was made in 1851 to place this service under the supervision of the Navy Department. The proposal was strongly urged by the head of that department, but was just as vigorously opposed by the Secretary of the Treasury and the Superintendent of the Survey. Consequently, no change was made.<sup>23</sup>

**U. S. Naval Observatory; Hydrographic Office; Nautical Almanac Office.** By act of August 31, 1842, the Secretary of the Navy was authorized to contract for a suitable house in the District of Columbia for a depot of charts and instruments of the navy. Under authority of this act, an observatory and chart depot was established in 1846, and was engaged in the double work of making astronomical observations, correcting chronometers, and of supplying charts to the navy; the establishment being styled the United States Naval Observatory and Hydrographic Office. The appointment of a superintendent for this office, to be detailed

<sup>22</sup> Benjamin, *op. cit.*, 188-89.

<sup>23</sup> 23 Cong. 2 sess. (1834-35), S. ex. doc. 1, 38; 24 Cong. 2 sess. (1836-37), H. ex. doc. 13; 31 Cong. 2 sess. (1850-51), S. ex. doc. 35 and 36.

from captains, commanders, or lieutenants in the navy, was authorized by act of August 3, 1848, and provision was made for an assistant astronomer and a principal clerk by act of March 3, 1853.<sup>24</sup> An act of March 3, 1849, directed that an officer of the navy, not below the grade of lieutenant, should be charged with the duty of preparing the Nautical Almanac for publication. This act was repealed by act of March 3, 1857, which authorized the Secretary of the Navy to place the supervision of the compilation and publication of the Nautical Almanac in charge of any officer or professor of mathematics of the navy of competent qualifications.<sup>25</sup>

**Naval Retiring Board.** The President was authorized by act of February 28, 1855, to cause a board of naval officers to be assembled, to consist of five captains, five commanders, and five lieutenants, which board, under such regulations as the Secretary of the Navy might prescribe, should examine into the efficiency of naval officers and report to the Secretary of the Navy the names and rank of all officers who, in the judgment of the board, were incapable of performing promptly and efficiently all their duties both ashore and afloat. Vacancies occurring in this board, which became known as the Naval Retiring Board, were to be filled by the Secretary of the Navy.<sup>26</sup>

**Organization of Secretary's Office.** It remains to be considered what organization, if any, was effected in the immediate office of the Secretary of the Navy, to assist that officer in the discharge of his duties. Mention was made in the preceding chapter of the establishment, by act of July 16, 1798, of the office of Accountant of the Navy Department, and its subsequent abolition by act of March 3, 1817, which provided for the appointment of four additional auditors in the Treasury Department, one of whom was to receive and examine all accounts of the Navy Department.<sup>27</sup> A Chief Clerk in the Secretary's office was authorized by act of April 20, 1818, who continued as the second

<sup>24</sup> 5 Stat. L., 576; 9 Stat. L., 266; 10 Stat. L., 220. Cf. 49 Cong. 1 sess. (1885-86), S. rep. 1285, 26.

<sup>25</sup> 9 Stat. L., 374, 375; 11 Stat. L., 243, 246.

<sup>26</sup> 10 Stat. L., 616; 12 Stat. L., 287, 291.

<sup>27</sup> 1 Stat. L., 610; 3 Stat. L., 366.

officer in the department until the office of Assistant Secretary was created in 1861. No statutory division of duties among the various clerks in the office of the Secretary or the Board of Commissioners was made until the act of August 31, 1842, reorganizing the department, except for the provision in the act of July 10, 1832, transferring the duties of the pension boards and the navy hospital board to the Secretary, which authorized the employment of one clerk for the navy and privateer pension funds and the navy hospital fund.<sup>28</sup>

The lack of a statutory division of duties among the clerks in these two offices, however, did not prevent such a division being made by administrative regulation. In a report submitted to the Senate on March 17, 1838, the Secretary of the Navy indicated how the work of his office and that of the Board of Commissioners was distributed among the clerks in those offices. The act of August 31, 1842, provided for one chief clerk, one registering clerk, three recording clerks, one principal and two assistant corresponding clerks, one warrant clerk, and one clerk to perform miscellaneous duties, in the Secretary's office. The Secretary was authorized by this act to assign and distribute the duties of the various bureaus among the clerks allotted to them.<sup>29</sup> The appointment of a disbursing clerk for the Navy Department was authorized by act of March 3, 1853, who should also act as superintendent of the buildings occupied by that department, when designated for that service by the Secretary.<sup>30</sup>

**Outstanding Characteristic and Fundamental Weakness in Organization.** The organization of the Navy Department prior to 1860 possessed one outstanding characteristic, namely, that during the period from 1815 to 1842, the administrative duties of the department were almost wholly performed by a board of three commissioners, the members of which were not individually held responsible for any definite part of the work of the board. A definite division of duties among the members of the board

<sup>28</sup> 3 Stat. L., 445, 446; 4 Stat. L., 572.

<sup>29</sup> 25 Cong. 2 sess. (1837-38), S. ex. doc. 436, 53, 55-56; 5 Stat. L., 579. The Secretary of the Navy had proposed a division of duties among the clerks in his office, similar to that provided for in the act of 1842, in his plan for the reorganization of the department submitted on March 7, 1842.—Cf. 27 Cong. 2 sess. (1841-42), H. ex. doc. 167, 1-6.

<sup>30</sup> 10 Stat. L., 189, 211.

was originally contemplated by the Secretary of the Navy in his report to Congress in 1814 regarding the establishment of such a board, and the necessity of entrusting a definite portion of the duties of the department to each commissioner was emphasized by at least three Secretaries of the Navy and by the Board of Commissioners itself before Congress undertook a reorganization of the department in 1842. The establishment of a number of bureaus in the Navy Department in that year, while providing for a more efficient discharge of the administrative duties of the department and the centralization of responsibility, had the effect of depriving the Secretary of the Navy of a group of professional advisers to determine, subject to his approval, matters of general naval policy. The recommendations made by the Board of Commissioners in 1829, by Secretary Branch in 1830, and by Secretary Paulding in 1839, while calling for a definite division of duties among the members of the existing Board of Commissioners, also provided for the retention of the board, as a collective body, to advise the Secretary when called upon by that officer. The failure to provide such an advisory board in the act of 1842 proved to be a most serious defect in the organization of the Navy Department.

## CHAPTER VIII

### THE POST OFFICE, THE ATTORNEY GENERAL'S OFFICE, AND DETACHED SERVICES

**The Post Office.** The act of September 22, 1789, providing for the temporary establishment of a General Post Office, authorized the appointment of a Postmaster General, who should be subject to the direction of the President in performing the duties of his office. The powers of that officer, his salary, and the compensation paid to the assistant or clerk and the deputy postmasters whom he might appoint, together with the regulations for the government of the Post Office Establishment, were to be the same as provided for by the resolutions and ordinances of the Confederation Congress. This act continued in force until February 20, 1792, when a statute was passed establishing a General Post Office at the seat of Government, in charge of a Postmaster General, who was given authority to appoint an assistant and deputy postmasters at all places where necessary. It was expressly provided that this act should continue in force for two years only. The Post Office was permanently established by act of May 8, 1794, which practically reënacted the former statute. The Postmaster General was allowed four clerks, in addition to an assistant, to aid him in the discharge of his duties.<sup>1</sup>

*Reorganization, 1799.* The Post Office Establishment was reorganized by act of March 2, 1799, which provided for the establishment of a General Post Office at the seat of government, under the direction of a Postmaster General. This officer was authorized to appoint an assistant and such clerks as he might deem necessary to perform the business of his office, the assistant to exercise control in case of his death, resignation, or removal,

<sup>1</sup> Stat. L., 70; 178; 218; 232; 354.

until his successor should be appointed. The act of April 30, 1810, with respect to the Post Office, authorized the appointment of an additional assistant by the Postmaster General. Provision was made in an act of April 20, 1818, for the appointment of a Chief Clerk in the General Post Office. An act "to reduce into one the several acts establishing and regulating the Post Office," approved March 3, 1825, made no changes in the organization of the Post Office Establishment.<sup>2</sup>

*Status as an Administrative Service.* As has been already pointed out, the Post Office was not at first looked upon as a separate and coördinate executive department. As a branch of the revenue, it was annexed to the Treasury Department by President Washington, and the Postmaster General submitted his annual reports to the head of that department.<sup>3</sup> The acts of 1792 and 1794 expressly provided that the Postmaster General should render a quarterly account to the Secretary of the Treasury. An annual report concerning post roads, to be submitted to Congress, was required by the act of 1799. President Monroe introduced the practice of having the Postmaster General make a report on the conditions and needs of the Post Office to the President, which became an established custom during the term of his successor, President John Quincy Adams.<sup>4</sup>

Prior to 1810, the postal organization was referred to in the statutes as the General Post Office. The term "Post Office Establishment" was first used in the title of the act of April 30, 1810, and the term "Post Office Department" was employed for the first time in the title of the act of March 3, 1825. Finally, the Post Office Department was not termed an "executive department" until the revision of the statutes in 1874.<sup>5</sup> The first evidence to indicate that Congress fully appreciated the increasing importance of the Post Office, which entitled it to be accorded an equal rank with the existing executive departments, is disclosed in the act of March 2, 1827, which placed the salary of the Postmaster

<sup>2</sup> 1 Stat. L., 733; 2 Stat. L., 592; 3 Stat. L., 445, 447; 4 Stat. L., 102.

<sup>3</sup> Hunt, *The department of state*, 92-93 (1914).

<sup>4</sup> *Memoirs of John Quincy Adams* (ed. Adams), VII, 54.

<sup>5</sup> 2 Stat. L., 592; 4 Stat. L., 102. Cf. Learned, *The president's cabinet*, 231-32 (1912).

General upon a basis of equality with that received by the heads of the other departments.<sup>6</sup>

The introduction of the Postmaster General into the Cabinet, for the first time, by President Jackson in 1829, was practically the final action necessary to secure for the Post Office Department, recognition as one of the great administrative departments, although it was not recognized as such by statutory enactment until 1874.<sup>7</sup>

*Organization, 1829 and 1836.* Statutes relating to the Post Office Department, which were passed prior to 1836, made no provision for the internal organization of that department other than that of authorizing the appointment, by the Postmaster General, of assistants and clerks to aid him in performing the duties of his office. Although a proper distribution of duties among the assistants and clerks in the department was, no doubt, effected by earlier Postmasters General, the first definite organization of the department, of which a record has been found, was that established by Major W. T. Barry, who was appointed to the office of Postmaster General by President Jackson in 1829. In a report communicated to the Senate on May 5, 1830, Postmaster General Barry included an outline of the organization of the Post Office Department and the assignment of duties to the officers and clerks by the head of that department. This document indicated the creation of three divisions in the department. The First Division, which was placed under the immediate direction of the Senior Assistant Postmaster General, included the bookkeepers of the department, the Solicitor's Office, the Pay Office, the Examiner's Office, the Register's Office, and several clerks performing miscellaneous duties. The Second Division, over which the Second Assistant Postmaster General exercised general supervision, included the Office of Appointments, the Dead Letter Office, and the Office of Instruction and Mail Depredations. The Third Di-

<sup>6</sup> 4 Stat. L., 239. In recommending this increase in the salary of the Postmaster General, the Committee on Post Offices and Post Roads of the Senate declared: "Whether the committee consider the labor required of him, the great responsibility of the office, or the talents he should possess, they are brought to the decision that his compensation should be equal to that of *any other head of a department.*" (Italics mine.) Cf. American State Papers, Post Office, I, 145.

<sup>7</sup> Learned, *op. cit.*, 244-49.

vision, in charge of the Chief Clerk, was composed of the Office of Mail Contracts and the Office of the Chief Clerk.<sup>8</sup>

On July 2, 1836, Congress, upon the recommendation of Postmaster General Amos Kendall, passed a law providing for a more thorough and business-like organization of the Post Office Department. The office of Third Assistant Postmaster General was created and an increase in clerical force authorized, which included a Chief Clerk and three principal clerks. Thereafter, all revenues of the department, instead of being available for expenditure at the discretion of the Postmaster General, were to be paid into the Treasury of the United States, and disbursed by the Treasurer upon warrants issued by the Postmaster General and registered and countersigned by the Auditor for the Post Office Department. The Postmaster General was required to submit to Congress detailed estimates of the amounts necessary to be expended under certain specific classifications named in the act, and Congress was thereupon to appropriate out of the revenue of the department received into the Treasury, such an aggregate sum as it deemed necessary each year for the service of the Post Office Department.<sup>9</sup>

*Auditor of the Treasury for the Post Office Department.* To insure the efficient operation of this new financial system, the office of "Auditor of the Treasury for the Post Office Department" was

<sup>8</sup> American State Papers, Post Office, I, 254-56. Cf. 21 Cong. 1 sess. (1829-30), S. ex. doc. 136. In a letter addressed to one of his constituents on February 25, 1835, Hon. Francis O. J. Smith, a member of the House of Representatives from Maine, undertook to defend the administration of the Post Office Department under Postmaster General Barry. In the course of his letter, he described the existing organization of the Post Office Department. "For conducting the main operations of the department," he said, "it has been organized under Major Barry in two grand divisions, called the Northern and Southern Divisions—each under the superintendence of an Assistant Postmaster General.... A third division of the department comprises the financial operations—the Examiner's Office, Pay Office, Register's Office, Solicitor's Office, and Dead Letter Office." It appears, from this account of the organization of the department, that the original arrangement effected by Postmaster General Barry had been materially altered. The two main divisions, under the new arrangement, performed, for their respective geographical areas, the duties formerly discharged by the Second and Third Divisions as they were organized in 1830, except that of the Dead Letter Office. Cf. Smith, A letter relating to the administration and present condition of the post office department, 6-8 (1835).

<sup>9</sup> 5 Stat. L., 80.

created. It was made the duty of this officer to receive all accounts accruing in the Post Office Department, to audit and settle such accounts, and certify their balances to the Postmaster General. He was further required to register, charge, and countersign warrants upon the Treasury for receipts and payments issued by the Postmaster General, when warranted by law; to transmit to the Secretary of the Treasury quarterly statements of the receipts and expenditures of the Post Office Department; to superintend the collection of debts and direct suits and legal proceedings to enforce the prompt payment of moneys due to the department; and to perform such other duties in relation to the financial concerns of the department as might be assigned to him by the Secretary of the Treasury. The establishment of this office has already been discussed in connection with the organization of the Treasury Department, where it was pointed out that, although the act of 1836 declared it to be an office of the Treasury Department, it was, in practice and in fact, an office or bureau of the Post Office Department, combining within the scope of duties assigned to it the various functions of all the provinces of the Treasury Department, except that of the Treasurer.<sup>10</sup>

<sup>10</sup> *Supra*, 144. Mayo calls attention to the fact that, although the office of Auditor of the Treasury for the Post Office Department was not established until 1836, the examination of the Post Office accounts had been performed at the Treasury Department from the earliest period of its establishment. The acts of 1789 and 1792 specifically required that all accounts of the Post Office be settled at the Treasury Department, and the act of March 3, 1817, providing "for the prompt settlement of public accounts," and creating the office of Fifth Auditor, made it the duty of that officer to receive and examine all accounts accruing in or relative to the General Post Office, and to certify the balances and transmit the accounts to the First Comptroller for his decision thereon. Previous to the transmission of the accounts of the Post Office to the accounting officers of the Treasury Department, however, a substantial and complete examination of them was performed in the Post Office Department. A large portion of the clerical force of the latter department prior to 1836 was engaged in conducting such examinations, under the supervision of a clerk designated as the Accountant. The insignificant number of clerks engaged in the Fifth Auditor's Office for auditing these accounts clearly indicates that, notwithstanding the statutory requirement that all accounts should be settled in the Treasury Department, for all practical purposes, the Post Office accounts were settled in that department. Cf. Mayo, *The treasury department and its various fiscal bureaus*, 161 (1847); 25 Cong. 2 sess. (1837-38), S. ex. doc. 436, 60.

*Local Postmasters Given Status of Presidential Officers.* Mention should be made, although it does not directly concern the administrative organization of the Post Office Department, of the additional provision in the act of 1836, whereby all local postmasters whose annual commissions equalled or exceeded \$1000 were to be appointed thereafter, not by the Postmaster General, as had been the case heretofore, but by the President, with the advice and consent of the Senate. Their term of office was limited to four years, with the provision that they might be removed during that time by the President. The widespread use of political patronage made possible by this innovation in the postal service, and its consequent deteriorating influence upon the efficiency of that service, was largely responsible for the establishment of an independent administrative agency in 1883, known as the Civil Service Commission, to correct the abuses incident to political appointments.

*Changes in Organization, 1836 and 1838.* Postmaster General Kendall, addressing a report to the Senate on May 9, 1836, in response to a resolution of that body dated April 25, 1836, briefly outlined the existing organization of the Post Office Department, in an effort to show the need for its reorganization and large additions to its clerical force. According to this outline the department was then organized into four main divisions, namely, a Contract Office, in charge of the First Assistant Postmaster General; an Appointment Office, in charge of the Second Assistant Postmaster General; an Inspection Office, superintended by the Chief Clerk of the department; and a Miscellaneous Division, in charge of a clerk designated as the Accountant of the Department.<sup>11</sup> In his annual report dated December 5, 1836, the Postmaster General indicated the organization of the department under the act of July 2 of that year. The Third Assistant Postmaster General had replaced the Chief Clerk as head of the Inspection Office, and the duties formerly included in the Miscellaneous Division, except that of examining the departmental accounts, which was now performed in the office of the Auditor, were placed under the immediate superintendence of the Postmaster General.<sup>12</sup>

<sup>11</sup> Quoted in 25 Cong. 2 sess. (1837-38), S. ex. doc. 436, 60.

<sup>12</sup> 24 Cong. 2 sess. (1836-37), H. ex. doc. 2, 519.

In obedience to a Senate resolution of March 9, 1838, the Postmaster General on May 8, 1838, again reported to that house on the organization of his department. A Miscellaneous Division had been reestablished, and the offices of Topographer, and Principal Dead Letter Clerk and Pay Agent, had been created.<sup>13</sup> Regulations for the government of the Post Office Department were drawn up by the Postmaster General, pursuant to an act of August 29, 1842, and published in 1843. These regulations divided and distributed the duties of the department among four offices, namely, the Contract Office, Appointment Office, Inspection Office, each in charge of an Assistant Postmaster General, and the Auditor's Office; general supervision of the department and the direction and control of the work of the three assistants being exercised by the Postmaster General.<sup>14</sup>

*Appointment of Assistant Postmasters General by the President.* No further alterations were made in the administrative organization of the Post Office Department prior to 1860, except the transfer of the power to appoint the Assistant Postmasters General from the Postmaster General to the President, with the advice and consent of the Senate, by act of March 3, 1853, and the creation by the same act of the office of Disbursing Clerk in the Post Office Department. The latter officer was also required to act as superintendent of the department building when assigned to that duty by the Postmaster General.<sup>15</sup>

*Principles of Single-Headed Control and Departmental Unity Applied.* The administrative organization of the Post Office Department prior to 1860 is a striking example of the thorough application of the principles of single-headed control and departmental unity. Until 1853 all the officers and clerks in the department were appointed by the Postmaster General and were subject to removal by him. Before 1836, the entire force of local postmasters also received their appointments from the head of the Post Office Department. Except for the provisions in the act of 1836 establishing the office of Auditor of the Treasury for the Post

<sup>13</sup> 25 Cong. 2 sess. (1837-38), S. ex. doc. 436, 57 *et seq.* The appointment of a clerk to act as topographer of the Post Office Department was authorized by act of March 3, 1837. This authorization was repeated in the acts of July 30, 1842, and March 3, 1853. 5 Stat. L., 163, 175; 498; 10 Stat. L., 189, 211.

<sup>14</sup> Quoted in Mayo, *op. cit.*, 165.

<sup>15</sup> 10 Stat. L., 189, 211; 249, 255.

Office Department, no attempt was made by Congress to provide for the organization of the Post Office Department. The statutes left the entire organization and distribution of the duties of the department to be fixed by regulations and orders issued by the Postmaster General. The officers and clerks in the department had no responsibility save to him. The exercise of this unusual grant of administrative power by the Postmaster General, however, did not escape severe criticism both in and out of Congress. A thorough revision of the statutes relating to the Post Office Department was undertaken in 1872, and the powers and duties of the Postmaster General were then specifically enumerated in great detail, but still no attempt was made to distribute the powers and responsibilities of the department.

**The Attorney General's Office.** "Of all the great offices established in 1789," says Learned, "that of the Attorney General was in some respects the least satisfactory in its organization."<sup>16</sup> The Judiciary Act of 1789, which created the office of Attorney General, imposed two duties upon that officer, namely, the prosecution and conduct of all suits in the Supreme Court in which the United States should be concerned, and the giving of advice and opinions upon questions of law when required by the President, or when requested by the heads of any of the departments, touching any matters that might concern their departments. The Attorney General was given no control or supervision of the district attorneys or of suits affecting the United States in the inferior courts. Nor was any sort of an establishment provided for the transaction of his business, either in the way of quarters or clerical assistance. In fixing the annual salary of the Attorney General at \$1,500, which was far below that of the heads of the three executive departments, members of Congress contended that his duties would be very light, that he could and would engage in private practice, and that the prestige of the office would be so great that it would be well worth the while of any lawyer to accept the office with only a nominal compensation.<sup>17</sup>

<sup>16</sup> Learned, *op. cit.*, 159.

<sup>17</sup> President Washington, in a letter written to Edmund Randolph on September 27, 1789, tendering him the office of Attorney General, said: ". . . The salary of this office appears to have been fixed at what it is, from a belief that the station would confer preeminence on its possessor, and procure for him a decided preference of professional employment."—Writings (ed. Ford), XI, 433.

Contrary to the predictions of members of Congress, however, the duties of the Attorney General, from the very beginning, proved to be very arduous. Although not called upon for some time to conduct a suit in behalf of the United States before the Supreme Court, he had to shape his own office, adapt the constitutional provisions and the Judiciary Act to their work, study out and decide the vexatious questions relating to the line of demarcation between the jurisdiction of the federal and state governments and their respective courts, and constantly give opinions and advice, both written and oral, to the President and to the heads of the departments, concerning internal affairs; and to the Secretary of State upon questions of international law arising out of the unsettled relations with foreign governments following the Revolutionary War.<sup>18</sup> It has already been pointed out that the Attorney General was, from the first, a member of the President's advisory council, subsequently known as the Cabinet, and consequently was looked upon as one of the principal officers, although he was not placed in charge of an administrative department, and for many years was not even furnished with permanent quarters or clerical assistance.

Edmund Randolph, appointed Attorney General by President Washington on September 26, 1789, submitted an elaborate and careful report to the House of Representatives on December 27, 1790, in response to a resolution of that body, concerning the entire judicial system of the United States, pointing out its defects and suggesting necessary changes.<sup>19</sup> A year later he addressed a letter to the President, dated December 26, 1791, in which he pointed out defects in the organization of his own office. He advised that the Attorney General be authorized to represent the government in the inferior courts as well as in the Supreme Court; that he be given control and supervision of the district attorneys; and that a clerk be provided to assist him in the detailed work of his office. This letter was transmitted to Congress by the President two days later, and the House Committee to which it was referred reported favorably upon all three of these recommendations, but Congress took no action with respect to them.<sup>20</sup> Twenty-seven

<sup>18</sup> Easby-Smith, *The department of justice*, 5-6 (1904).

<sup>19</sup> American State Papers, Misc., I, 21-36.

<sup>20</sup> *Ibid.*, 45-46.

years elapsed before any allowance was made for clerk hire, and seventy before the Attorney General was given supervision and control of district attorneys.

Although the act of 1789 made it the statutory duty of the Attorney General to conduct in person only those cases coming before the Supreme Court, to which the United States was a party, the precedent was soon established whereby the President, in the performance of his constitutional duty, might instruct the Attorney General to give his direct personal attention to legal concerns of the United States elsewhere, when the interests of the government seemed to the President to require it. Thus President Washington instructed the Attorney General in 1792 to attend the circuit court at York, on the occasion of certain indictments pending there, "to see that that business be conducted in a manner to which no exception can be taken with propriety, and for the purpose of giving to the measures of government a more solemn and serious aspect."<sup>21</sup>

From 1800, when the seat of the Government was removed from Philadelphia to Washington, until 1814, the Attorneys General did not reside permanently at the national capital, but remained at their homes and transmitted their advice and opinions by mail, going to Washington only when it became necessary to appear before the Supreme Court. Although the salary of the Attorney General was increased from time to time, being fixed at \$3000 in 1799, Congress continued to refuse an appropriation for permanent quarters, fuel, stationery, or clerical assistance. An attempt was made in 1814 to enact a residence requirement. A resolution was introduced in the House of Representatives on January 5 of that year, and agreed to without opposition, instructing the Committee on the Judiciary "to inquire into the expediency of making it the duty of the Attorney General of the United States to keep his office at the seat of Government during the session of Congress." Mr. Taylor, in presenting this resolution, said: "The vast importance of the acts frequently before Congress, and their bearing on pre-existing laws, seemed to render it especially necessary that such

<sup>21</sup> 33 Cong. 1 sess. (1853-54), S. ex. doc. 55, 7.

an officer should be present at this place during the sessions of Congress."<sup>22</sup>

In accordance with this resolution, a bill was introduced in the House on January 22, which made it the duty of the Attorney General to reside permanently at the seat of the general government, provided for an increase in his compensation, and expressly directed him to make reports, in writing, and give written opinions on all points of a legal nature referred to him by the President or Congress of the United States. This bill was passed by the House on April 15, after the provision for increasing the salary of the Attorney General had been struck out, but it did not get beyond a second reading in the Senate.<sup>23</sup> President Madison, however, who was in sympathy with the residence requirement, exacted the stipulation from Richard Rush, who was appointed to succeed William Pinckney as Attorney General in 1814, that during the sessions of Congress he must reside at the seat of government.<sup>24</sup>

President Madison, who was impressed with the need of improvement in the Attorney General's Office, recommended in his last annual message to Congress, dated December 3, 1816, "that the provision for the station of Attorney General, whose residence at the seat of Government, official connections with it, and the management of the public business before the Judiciary, preclude an extensive participation in professional emoluments, be made more adequate to his services and his relinquishments; and that, with a view to his reasonable accommodation, and to a proper depository of his official opinions and proceedings, there be included in the provision the usual appurtenances to a public office."<sup>25</sup> Congress, however, again failed to act with respect to this subject.

<sup>22</sup> 13 Cong. 2 sess. (1813-14), *Annals of Congress*, 852-53. It should be observed in this connection that some uncertainty existed at that time upon the point whether the Attorney General was required to give legal opinions to Congress. Evidently the House regarded the Attorney General as the proper officer to aid it at times in respect to doubtful points of law. Although refused in one instance by Attorney General Wirt, Caleb Cushing, in a report to the President submitted on March 8, 1854, said that Wirt, "in common with other persons holding the office, recognized by his action in sundry cases, the right of either House of Congress to call on him for information in any matters within the scope of his office, and his duty to communicate the same."—Cf. 33 Cong. 1 sess. (1853-54), S. ex. doc. 55, 7; 16 Cong. 1 sess. (1819-20), H. ex. doc. 68, 3.

<sup>23</sup> 13 Cong. 2 sess. (1813-14), *Annals of Congress*, 766, 1114-15, 2023-24.

<sup>24</sup> 14 Cong. 2 sess. (1816-17), *Ibid.*, 699.

<sup>25</sup> *Ibid.*, 15.

William Wirt of Virginia was appointed Attorney General by President Monroe on November 13, 1817, and continued to hold that office until March 3, 1829. Finding no books or documents with respect to the work of his predecessors, he determined to keep a record of all his official opinions, and to obtain from the various heads of departments who might consult him, copies of all documents concerning which he might be asked for opinions. Such a record was faithfully kept by Mr. Wirt, the earlier entries all being in his own handwriting.<sup>26</sup>

That President Monroe was well acquainted with the inadequate provision made by Congress for the Attorney General's Office is evidenced by a letter written on December 31, 1816, to William Lowndes, chairman of the House Ways and Means Committee, only a few months prior to his inauguration as President. This letter has previously been quoted to indicate the presence of the Attorney General in the early meetings of the President's Cabinet. Monroe particularly emphasized the increased volume of business transacted in the Attorney General's Office, which made it almost impossible for that officer to carry on a private practice. Concluding, he said: "The office has no apartment for business, nor clerks, nor a messenger, nor stationery, nor fuel allowed. These have been supplied by the officer himself, at his own expense."<sup>27</sup>

On March 27, 1818, Attorney General Wirt addressed a letter to the chairman of the House Judiciary Committee setting forth what he conceived to be certain defects in that portion of the Judiciary Act of 1789 establishing the Attorney General's Office, and suggesting such improvements as he hoped Congress might be induced to make. He first called attention to the absence of any records of opinions rendered by his predecessors, which exposed the office to the danger of a lack of consistency and uniformity in its decisions, and asked that some provision be made, by law, for keeping a record of the opinions and official correspondence of the Attorney General in his office, and for preserving the documents submitted for his advice. In the second place, he emphasized the need for a depository in his office for the statutes of the various

<sup>26</sup> Easby-Smith, *op. cit.*, 9-10.

<sup>27</sup> 14 Cong. 2 sess. (1816-17), Annals of Congress, 699. *Supra*, 107-08.

states—statutes which, on occasion, it was necessary for him to consult for aid in solving legal problems. Finally, he noted that, while the act of 1789 limited the right of the Attorney General to give official advice and opinions on cases in which he should be called upon by the President, or by the heads of departments, that officer was called upon, in his official capacity, for advice and opinions by committees of Congress, district attorneys, collectors of customs, marshals, and other public officers. Accordingly, he proposed that, if it were deemed advisable by Congress to open the office of the Attorney General to applications of this kind, express authority for that purpose should be given him by law. To extend the provisions of the act of 1789 thus, he added, would necessitate the Attorney General relinquishing entirely his private practice. "Even under the duties as they now exist," he said, "very little time is left to the Attorney General to aid the salary of his office by individual engagements—a fact which may explain, in part, the frequent resignations of this office which have heretofore occurred."<sup>28</sup>

*Congress Provides Quarters, etc.* Congress finally was moved in 1818 to provide for a clerk in the Attorney General's Office, and to appropriate a small sum for office rooms, stationery, and other incidental expenses. The following year the salary of the Attorney General was increased to \$3500 per annum, in comparison with \$4000 for the Postmaster General and \$6000 for the heads of the four executive departments. In 1822 the Attorney General was furnished with his first official quarters.<sup>29</sup> "By the close of Wirt's long occupancy of the office in 1829," says Learned, "it had certainly risen in importance, and was probably considered as more closely allied to the whole executive administration than ever before."<sup>30</sup>

*Proposed Reorganization.* President Jackson, in his annual message of December 8, 1829, recommended that the duties of the

<sup>28</sup> American State Papers, Misc., II, 590-91.

<sup>29</sup> 3 Stat. L., 445, 447; 484; Easby-Smith, *op. cit.*, 10.

<sup>30</sup> Learned, *op. cit.*, 169. Some idea of the enlarged scope of the work performed in the Attorney General's office during Mr. Wirt's occupancy of that office may be gained from the fact that, whereas the opinions of his eight predecessors during the period from 1789 to 1816 fill less than two hundred pages of the first volume in the series of Attorneys' General Opinions, Mr. Wirt is represented by more than seven hundred pages in the first two volumes, covering the period from 1817 to 1829.

Fifth Auditor, who, as the Agent of the Treasury, was authorized by act of May 15, 1820, to direct and superintend all suits and proceedings for the recovery of debts due the United States, be transferred to the Attorney General; "and that this officer be placed on the same footing in all respects as the heads of the other departments, receiving like compensation and having such subordinate officers provided for his department as may be requisite for the discharge of these additional duties." He also suggested the desirability of employing the professional skill of the Attorney General in directing the conduct of marshals and district attorneys and in superintending all criminal proceedings for offenses against the United States.<sup>21</sup>

In compliance with this recommendation, a bill was introduced on March 26, 1830, which had for its chief objects: (1) The reorganization of the Attorney General's Office so as to erect it into an executive department; (2) the transfer to that office, from the Department of State, the work of the Patent Office; (3) the superintendence by the Attorney General of the collection of debts due the government; and (4) the increase of the salary of the Attorney General to \$6000—the amount provided at that time for the heads of the four executive departments. The bill was framed with the intention of obviating the necessity of organizing a Home Department, and evidently ignored the essential fact that the Attorney General was primarily a law officer. It was defeated through the efforts of those who favored the immediate organization of a Home Department and those who favored the practice of the Attorney General engaging in private law practice to supplement his official income.<sup>22</sup>

*Attorney General Made Legal Adviser to Solicitor of the Treasury.* As a substitute for the measure thus defeated, a bill was drawn up and passed on May 29, 1830, which created the office of Solicitor of the Treasury, who was charged with the conduct of civil suits in which the government was interested. The Attorney General was required to act as the legal adviser of the Solicitor, for which he was to receive \$500 per annum in addition to his salary.<sup>23</sup> That

<sup>21</sup> 21 Cong. 1 sess. (1829-30), S. ex. doc. 1, 12; Messages and papers of the presidents, II, 453-54; 3 Stat. L., 592.

<sup>22</sup> 21 Cong. 1 sess. (1829-30), Register of Debates, VI, Pt. 1, 276, 322 et seq., 404.

<sup>23</sup> 4 Stat. L., 414.

this measure did not meet the expectations of the President is evidenced by his annual message of December 6, 1830, in which he expressed the belief that this provision, however useful in itself, was not calculated to supersede the necessity of extending the duties and powers of the Attorney General. "On the contrary," he said, "I am convinced that the public interest would be greatly promoted by giving to that officer the general superintendence of the various law agents of the government, and of all law proceedings, whether civil or criminal, in which the United States may be interested, allowing him at the same time such compensation as would enable him to devote his undivided attention to the public business. I think such a provision is alike due to the public and to the officer."<sup>34</sup> Again Congress failed to act upon the recommendation of the President.

*President Polk's Recommendations.* No further effort seems to have been made to reform the office of the Attorney General until 1845.<sup>35</sup> President Polk, in his first annual message to Congress, dated December 2, 1845, recalled the repeated recommendations of his predecessors, beginning with Madison, for a reorganization of the Attorney General's Office, and strongly urged upon Congress the immediate necessity of creating a legal department, with the Attorney General at its head, who should be placed on the same footing with the heads of the other executive departments.<sup>36</sup> But his proposals met the fate of the many that had gone before. Congress paid no heed to them.

*Attorney General Placed Upon Equal Salary Basis with Other Cabinet Officers.* Some slight improvements in the organization of the Attorney General's office were made from time to time. The nucleus of a library was formed through appropriations made by Congress for that purpose in 1831 and in 1840.<sup>37</sup> By act of September 30, 1850, the salary of the Attorney General was increased to \$6000 and the employment of an additional clerk authorized. Congress directed the making and adoption of a seal for the Attorney General's Office by act of February 22, 1849.<sup>38</sup> In 1853

<sup>34</sup> Messages and papers of the presidents, II, 527.

<sup>35</sup> Learned, *op. cit.*, 175-76.

<sup>36</sup> 29 Cong. 1 sess. (1845-46), S. ex. doc. 1, 29; Messages and papers of the presidents, IV, 415.

<sup>37</sup> 4 Stat. L., 452, 457 (March 2, 1831); 5 Stat. L., 371, 377 (May 8, 1840).

<sup>38</sup> 9 Stat. L., 347.

Congress at last complied with the requests of the several Presidents who had recommended that the Attorney General be placed on an equal footing with the other cabinet officers, and fixed the compensation of that officer at \$8000, which was the amount granted to the heads of the executive departments.<sup>39</sup>

*Recommendations of Attorney General Caleb Cushing.* On March 7, 1853, President Pierce appointed Caleb Cushing of Massachusetts as Attorney General, who, in Mr. Learned's opinion, "was the ablest organizer that the office had had since its establishment in 1789."<sup>40</sup> During his occupancy of the office, which continued until 1857, he rendered two important reports—one upon the judiciary and one upon the legal department of the government. The first of these reports, which was submitted to the President on February 4, 1854, was written in compliance with resolutions of the Senate and the House of Representatives, and contained a complete history of the judiciary from the adoption of the Constitution, together with recommendations for the modification and enlargement of the entire judicial system. "It paved the way to the subsequent readjustment of the circuit courts, and contained the first suggestion of the establishment of an intermediate appellate court which was carried into effect in 1891 by the creation of the circuit court of appeals."<sup>41</sup>

The second report, which was submitted to the President on March 8, 1854, consisted of a detailed exposition of the constitution of the office of Attorney General as a branch of the executive administration of the United States, together with suggestions for improvement in the manner of conducting the legal business of the government. Many of the latter were enacted into law during the period from 1854, when the report was written, to 1870, when the Attorney General was placed at the head of a Department of Justice. The most important modifications in the organization and duties of his office which he proposed were the following: (1) A provision, either by law or regulation, for a periodical report by the Attorney General to the President, and through him to Congress, of the business of his office, including the official opinions given by him, and any pertinent suggestions regarding the inter-

<sup>39</sup> 10 Stat. L., 189, 212.

<sup>40</sup> Learned, *op. cit.*, 184.

<sup>41</sup> 6 Op. Atty. Gen., 271-89. Cf. Easby-Smith, *op. cit.*, 15.

ests of the government; (2) authorization from Congress to reorganize the Attorney General's Office, in order that the President might assign to it the conduct of suits in which the United States were ultimately concerned, but in which they were not a party of record, or which were not brought in the courts of the United States; (3) express authorization from Congress directing the Attorney General to assist the President in the exercise of the pardoning power; (4) transfer to the Attorney General of the power to appoint and supervise the accounts of judicial officers; and (5) express provision for the case of a temporary vacancy in the office of Attorney General.<sup>42</sup>

Cushing closed this report with some observations on the propriety of the Attorney General engaging in private law practice during his term of office. He himself doubted the expediency of permitting the head of a department, under any circumstances, to continue in the practice of law as a profession. While admitting that the early custom of the Attorney General in this respect did not essentially interfere with his proper official duties or prejudicially affect his general relation to the government, he contended that the vast augmentation of administrative business now made it impossible for that officer, compatible with performing well the duties of his office, to be absent frequently from the seat of government, attending to private professional pursuits. Concluding, he expressed his intention to regard the recent act of Congress, which had at length placed the salary of his office on an equal footing with other public officers of the same class, as intimation at least that the government had the same precise claim on his services, in time and degree, as on those of the Secretary of State or the Secretary of the Treasury.

*Clerical Force and Powers of Attorney General Augmented.* The clerical force in the Attorney General's Office was augmented by act of August 4, 1854, which authorized the employment of three additional clerks. The entire clerical force was reorganized by act of March 3, 1859, which authorized the Attorney General to appoint an assistant and three clerks to aid him in performing the duties of his office. He was further directed to employ such number of temporary clerks as he might deem necessary, whose total compensation should not exceed \$1000 per annum. In 1861 Con-

<sup>42</sup> 6 Op. Atty. Gen., 326-55.

gress finally carried out the recommendation made by Randolph seventy years before, and repeated by many of his successors, by granting to the Attorney General, supervision and control over United States marshals and district attorneys.<sup>43</sup>

*Attorney General a Member of Administrative Boards.* During the period from 1789 to 1860, the Attorney General, in addition to the legal duties enumerated above, was associated with other administrative officers in the performance of various other powers and duties. Thus, by act of April 10, 1790, he was made a member of a board authorized to grant patents. This board was discharged on February 21, 1793, and its duties transferred to the Secretary of State.<sup>44</sup> He was also designated by the act of April 2, 1792, establishing the mint of the United States, as a member of a board to inspect the assay of gold and silver for coinage. This duty was later transferred to the district judge and the district attorney of Eastern Pennsylvania.<sup>45</sup> Prior to 1850 the preliminary and advisory work upon applications for executive clemency was performed jointly by the Secretary of State and the Attorney General, all the papers and records being kept in the Department of State. In 1850 the President directed that the petitions be sent to the Attorney General, and thereafter his was the chief agency in the matter.<sup>46</sup> By act of March 3, 1849, the Attorney General was associated with the Secretary of State and the Postmaster General, as a board, to prepare forms and schedules for the agricultural, commercial, and other statistical facts to be collected in the taking of the seventh census of the United States.<sup>47</sup> Finally, by acts of August 3, 1846, and March 3, 1853, he exercised joint powers with, first, the Secretary of the Treasury, and, later, with the Secretary of the Interior with respect to entries and claims to public lands.<sup>48</sup>

*Unsatisfactory Character of the Office.* The development of the Attorney General's Office, as outlined above, certainly substantiates

<sup>43</sup> 10 Stat. L., 546, 572; 11 Stat. L., 410, 420; 12 Stat. L., 285. Supervision of the work of United States district attorneys and marshals was exercised by the Agent of the Treasury and later by the Solicitor of the Treasury under authority of the acts of May 15, 1820, and May 29, 1830, creating those offices. 3 Stat. L., 592, 596; 4 Stat. L., 414, 415.

<sup>44</sup> 1 Stat. L., 109, 110; 318.

<sup>45</sup> 1 Stat. L., 246, 250; 5 Stat. L., 136, 141. Cf. 6 Op. Atty. Gen., 336.

<sup>46</sup> Hunt, *op. cit.*, 130-31; Easby-Smith, *op. cit.*, 15.

<sup>47</sup> 9 Stat. L., 402.

<sup>48</sup> 9 Stat. L., 51; 10 Stat. L., 258.

the statement quoted from Mr. Learned at the beginning of this section, namely, that the organization of that office was the least satisfactory of all the offices established in 1789. For a long period of years, without either clerical force or office accommodations, and, until 1859, with only a small number of clerks to aid in performing its duties, the office of Attorney General could hardly be expected to portray any marked characteristics of administrative organization. It can be said, however, that the appointing and directing power of the Attorney General with respect to that office was exercised without statutory restraint. The act establishing the Attorney General's office did not even provide that that officer should be subject to the general direction of the President, although, as Attorney General Cushing pointed out, the established sense of his subordination to the President had come to exist, "partly by construction of the constitutional duty of the President to take care that the laws be faithfully executed, and his consequent necessary relation to the heads of departments, and partly by deduction from the analogies of statutes."<sup>49</sup>. To these should be added the effective control exercised by the President through his power to appoint and remove that officer.

Although intimately associated from the beginning with the principal administrative officers who constituted the President's Cabinet, it was not until 1853 that the Attorney General was placed upon a plane of equality with the heads of departments, in respect to the amount of compensation which he was to receive. The grant by Congress in 1861 to the Attorney General of the power to supervise and control the United States district attorneys and marshals was an important step in the direction of the establishment of an administrative department, in charge of that officer.

**Detached Services.** The history of administrative organization in the United States prior to 1860 offers only a very few illustrations of the establishment of permanent administrative bureaus, boards, and commissions, independent of any of the main departments and directly responsible to the President or Congress. A considerable number of temporary commissions were created from time to time, however, charged with the performance of certain special administrative duties. The board of commissioners estab-

<sup>49</sup> 6 Op. Atty. Gen., 332.

lished by act of August 5, 1790, to settle accounts between the United States and the various individual states, and the board of three commissioners authorized by act of July 16, 1790, to survey and limit a district of territory, to buy or accept land, and to provide suitable buildings for a national capitol, under the direction of the President, are typical of these temporary independent or detached agencies.<sup>50</sup> Only those detached administrative bureaus or commissions of a more permanent character, however, will be considered here.

*U. S. Mint.* By act of April 2, 1792, a United States Mint was established, in charge of a Director, assisted by an assayer, a chief coiner, an engraver, and a treasurer. The Director was authorized to employ a necessary number of clerks and workmen, with the approval of the President.<sup>51</sup> It has already been observed, in connection with the organization of the Department of State, that the Secretary of that department was directed by President Washington to exercise general supervision over the conduct of the mint.<sup>52</sup> This arrangement seems to have been continued only during President Washington's two terms of office. Beginning with the year 1799, the Director of the Mint submitted his reports directly to the President, and the Mint Establishment was conducted independently of any of the departments, except that the Treasurer of the Mint was required to submit quarterly financial reports to the Treasury Department.<sup>53</sup>

The mint was originally located at Philadelphia. Following the removal of the national capitol to Washington, it was proposed to change the location of the mint to that city. Temporary acts were passed from time to time, however, continuing the mint at Philadelphia, and it was permanently located in that city by act of May 19, 1828.<sup>54</sup> Branch mints were established by act of March 3, 1835, under the immediate direction of superintendents appointed by the President, with the consent of the Senate. The Director of the Mint at Philadelphia was authorized to exercise general supervision and control over these branch mints, subject to the approbation of the Secretary of the Treasury.<sup>55</sup>

<sup>50</sup> 1 Stat. L., 130; 178.

<sup>51</sup> 1 Stat. L., 246.

<sup>52</sup> *Supra*, 115n. Cf. Hunt, *op. cit.*, 93.

<sup>53</sup> American State Papers, Finance, I, 602.

<sup>54</sup> 2 Stat. L., 111; 242; 481; 787; 3 Stat. L., 403; 774; 4 Stat. L., 277.

<sup>55</sup> 4 Stat. L., 774.

This latter provision in the act of 1835 was the first statutory grant of supervisory authority to the Secretary of the Treasury over the affairs of the mint. In a joint report submitted to the Senate on December 6, 1816, the Secretaries of the four executive departments recommended, among other alterations in the organization of their departments, that the "Mint Establishment be placed under the direction of the Treasury Department." In another joint report addressed to the chairman of the Ways and Means Committee of the House on the same general subject, the Secretaries said: "The various branches of executive authority are now under the direction of the secretaries of the departments, except the General Post Office and the Mint. They form exceptions to the general principle upon which the Executive Department has been organized. The best examination which the Secretaries have been able to give the subject has led to the belief that the anomalous organization of these Departments has not been productive of any beneficial consequences."<sup>58</sup>

A bill was introduced in the Senate on January 6, 1817, in accordance with the proposals made by the department secretaries, Section 4 of which provided as follows: "That the Mint of the United States shall be under the superintendence and direction of the Secretary of the Treasury." The measure, however, failed to secure the approval of the Senate.<sup>57</sup> The whole Mint Establishment was reorganized by act of January 18, 1837. The Director was charged with the control and management of the mint, the superintendence of the officers and persons employed therein, and the general regulation and supervision of the business of the several branches. The appointment of the Director and the chief officers of the mint was vested in the President with the consent of the Senate, but assistants and clerks were to be appointed by the Director, with the approbation of the Senate. The Director was required to submit an annual report to the President on the operations of the Mint and its branches, and also to report to the Secretary of the Treasury from time to time, at the request of that officer, setting forth the operations of the mint subsequent to his last annual report.<sup>58</sup>

<sup>58</sup> 14 Cong. 2 sess. (1816-17), *Annals of Congress*, 28, 698.

<sup>57</sup> *Ibid.*, 47, 88.

<sup>58</sup> 5 Stat. L., 136.

It will be observed that under the act of 1837, the Director of the Mint was still made directly responsible to the President, although required to submit certain reports to the Secretary of the Treasury. Another branch mint was established by act of July 3, 1852, under the general supervision of the Director of the Mint, subject to the approbation of the Secretary of the Treasury. An act of February 21, 1857, provided that the annual report of the Director should thereafter be submitted to the Secretary of the Treasury. Through these various statutory provisions the head of the Treasury Department came to exercise a nominal supervision over the whole Mint Establishment, but it was not until 1873 that a Bureau of the Mint was created in that department.<sup>59</sup>

*Commissioner of Public Buildings; Architect of the Capitol.* Mention was made at the beginning of this section of the appointment of a board of three commissioners by act of July 16, 1790, to superintend the establishment of the national capitol. This board was abolished by act of May 1, 1802, which transferred the duties of the commissioners to a Superintendent appointed by, and under the control of, the President. This latter office was abolished by act of April 29, 1816, which authorized the appointment of a Commissioner of Public Buildings, under the direction of the President.<sup>60</sup> Another officer appointed by the President in connection with the construction of public buildings was the Architect of the Capitol, or Surveyor of Public Buildings as he was first called. Although nominally responsible, first, to the Commissioners of Public Buildings, then to the Superintendent of Public Buildings, and finally to the Commissioner of Public Buildings, the Architect or Surveyor looked to the President for instructions and approval of his work.<sup>61</sup>

The office of Architect of the Capitol was not mentioned in the statutes until 1828, when, by act of May 2 of that year, it was provided that that office should cease and determine from and after March 4, 1829, and that the Architect should deliver all the records and accounts of his office to the Commissioner of Public Build-

<sup>59</sup> 10 Stat. L., 11; 11 Stat. L., 163, 164; 17 Stat. L., 424.

<sup>60</sup> 1 Stat. L., 130; 2 Stat. L., 175; 3 Stat. L., 324.

<sup>61</sup> For the history of this office, see Hazelton, *The national capitol—its architecture, art and history*, 10-49 (1914).

ings.<sup>62</sup> The latter office was continued as an independent administrative agency until 1849, when the Commissioner was placed under the supervision of the Secretary of the Interior.<sup>63</sup> The office of Architect of Capitol Extension was created by act of September 30, 1850, which appropriated the sum of \$100,000 for the extension of the capitol, to be expended by the Architect under the direction of the President, and according to plans approved by him.<sup>64</sup>

The office of Commissioner of Public Buildings continued under the supervision of the Department of Interior until 1867, when it was abolished and the duties thereof transferred to the Chief Engineer of the Army.<sup>65</sup>

*Joint Committee on Printing; Superintendent of Public Printing.* Prior to 1852, each of the executive departments, the two Houses of Congress, and the United States Supreme Court were authorized to contract separately for printing, stationery, and binding, and to supervise the proper performance of such contracts.<sup>66</sup> A Committee on Printing was established by joint resolution of August 3, 1846, consisting of three members of each House, to supervise the execution of contracts for printing ordered by Congress.<sup>67</sup> The foregoing resolutions, together with all other conflicting acts and resolutions, were repealed by act of August 26, 1852, which authorized the appointment of a Superintendent of Public Printing, who should receive all matter from the two Houses of Congress and from the several chiefs of departments and heads of bureaus, ordered to be printed by them, to deliver such matter to the public printer or printers, to supervise the execution of such printing, and to issue certificates to the public printer for work done, payable by the Treasurer of the United States. Each House of Congress was

<sup>62</sup> 4 Stat. L., 265, 266. The life of the office was extended until 1830 by the President, under authority of an act of March 3, 1829. 4 Stat. L., 362, 363. Cf. Hazelton, *op. cit.*, 49. The office of Architect of Public Buildings and Grounds seems to have been established under the Commissioner of Public Buildings and Grounds. No mention is made in the statutes of such office, however, until its abolition by act of August 26, 1842. 5 Stat. L., 523, 525.

<sup>63</sup> 9 Stat. L., 395, 396 (March 3, 1849).

<sup>64</sup> 9 Stat. L., 523, 538.

<sup>65</sup> 14 Stat. L., 457, 466 (March 2, 1867).

<sup>66</sup> 3 Stat. L., 538 (March 3, 1819); 5 Stat. L., 475, 476; 523, 526 (May 18 and August 26, 1842); 5 Stat. L., 681, 690 (June 17, 1844).

<sup>67</sup> 9 Stat. L., 113.

authorized to elect a public printer to do the public printing for the Congress for which he or they might be chosen, and also such printing for the executive departments and bureaus of the government as might be delivered to him or them to be printed, by the Superintendent of Public Printing. A Joint Committee on Public Printing, to consist of three members of each House, was established to exercise general supervision of the public printing and to settle any disputes which might arise between the public printer and the Superintendent of Public Printing over the execution of contracts.<sup>68</sup>

A select committee on public printing, appointed by the House to "inquire and report upon the propriety and expediency of entirely separating the patronage of the Government from the newspaper or public press of the country," submitted its report on April 14, 1840. The majority of the committee expressed their conviction that a government press should never be permitted, even though it was financially advantageous, because its creation would embody "a theory abhorrent alike to the genius of our free institutions and the principles of democracy." A minority of the committee strongly urged the establishment of a Public Printing Office and offered a bill for that purpose. The majority report, however, received the sanction of the House.<sup>69</sup>

The serious difficulties arising from the system of contracting with private individuals for the printing of public documents finally led Congress to authorize and direct the Superintendent of Public Printing, by joint resolution of June 23, 1860, to have executed on and after March 4, 1861, the printing and binding ordered by the Senate and House of Representatives, the executive and judicial departments, and the Court of Claims, and to enable him to do so, he was empowered to contract for the erection or purchase of the necessary buildings, machinery, and materials for that purpose subject to the approval of the Joint Committee on Printing of the two Houses of Congress. He was further authorized to appoint a foreman of printing, a foreman of binding, and all other employees necessary to execute the orders of Congress and of the executive and judicial departments. He was required to prepare and submit to the Register of the Treasury annual estimates for the expense

<sup>68</sup> 10 Stat. L., 30.

<sup>69</sup> 26 Cong. 1 sess. (1839-40), H. rep. 425, 1-8; 26 Cong. 1 sess., Congressional Globe, VIII, 392.

of the printing establishment and to report on the condition of the same to Congress at the beginning of each session of that body.<sup>70</sup>

*Public Printer.* The office of Superintendent of Public Printing was abolished by act of February 22, 1867, and the management of the Government Printing Office entrusted to a Congressional Printer, elected by the Senate, and to be deemed an officer of that House.<sup>71</sup> Although the Congressional Printer was an officer of Congress rather than an administrative officer, subject to the direction of the President, the office of the Superintendent of Public Printing was a more or less independent administrative agency and, as such, deserves to be noted in a study of administrative organization. By act of June 20, 1874, the title of Congressional Printer was changed to Public Printer, and instead of an officer of the Senate, he was thereafter to be deemed an officer of the United States, to be appointed by the President, with the consent of the Senate, but the Public Printing Act of January 15, 1895, continued the Joint Committee on Printing as the real controlling head of the Government Printing Office.<sup>72</sup>

*Commissioners of the Sinking Fund.* One *ex officio* administrative commission deserves to be mentioned because of its importance and also because it continued to exist as an independent agency for a period of almost forty-five years. An act of August 4, 1790, making provision for the payment of the debt of the United States, directed that the proceeds from the sale of public lands in the Western territory should be appropriated as a sinking fund for the sole purpose of discharging the debt incurred by virtue of that act. An act approved eight days later authorized the purchase of the debt of the United States, out of surplus revenue received from import and tonnage duties, under the direction of the President of the Senate, the Chief Justice, the Secretary of State, the Secretary of the Treasury, and the Attorney General, any three of whom were empowered to make such purchases with the approbation of the President. Further provisions for the purchase of the debt of the United States out of surplus funds appropriated for the payment of the interest on such debt were made by act of May 8, 1792. The same five officers were authorized to make such purchases

<sup>70</sup> 12 Stat. L., 117.

<sup>71</sup> 14 Stat. L., 398.

<sup>72</sup> 18 Stat. L., 85, 88; 28 Stat. L., 601.

and were required to report annually thereon to Congress.<sup>73</sup> Subsequent acts were passed by Congress from time to time authorizing appropriations to be paid into the sinking fund for the purchase of the public debt. The fund continued to be administered by the five officers appointed in 1790, who became known as the Commissioners of the Sinking Fund. By act of April 28, 1796, the Commissioners were authorized to appoint a Secretary whose duty it should be to record and preserve their proceedings and documents. The duties and powers of the Commissioners of the Sinking Fund were transferred to the Secretary of the Treasury by act of July 4, 1836.<sup>74</sup>

*Library of Congress.* Although the Library of Congress, for the establishment of which an appropriation was first made by Congress in the act of April 24, 1800, was originally little more than a collection of books for the use of members of the national legislature, its present organization and functions make of it a national library, and it is properly considered as a part of the national administration. The appointment of a Librarian, by the President alone, was authorized by act of January 26, 1802, who was given general supervision over the library administration, under regulations made by the President of the Senate and the Speaker of the House of Representatives. The appointment of assistant librarians was authorized by acts of March 2, 1827, March 3, 1841, and March 3, 1855.<sup>75</sup> The purchase of books for the Library was intrusted, by act of February 21, 1806, to a joint committee of Congress, consisting of three members from each House. The establishment of a Law Library, as a part of the Library of Congress, was authorized by act of July 14, 1832. The Librarian of Congress was given charge of the Law Library and was authorized to make purchases of books for it, under the direction of the Chief Justice of the United States Supreme Court.

*Smithsonian Institution.* An act approved on August 10, 1846, provided for the incorporation of an establishment to be known as the Smithsonian Institution, "for the increase and diffusion of knowledge among men." This institution was the result of a

<sup>73</sup> 1 Stat. L., 186; 281, 283; 443, 444.

<sup>74</sup> 1 Stat. L., 458, 459; 5 Stat. L., 112, 115.

<sup>75</sup> 2 Stat. L., 55, 56; 128; 4 Stat. L., 226; 5 Stat. L., 421, 431; 10 Stat. L., 643, 645.

bequest made to the United States by James Smithson, an English scientist, for the purpose of founding such an establishment. Smithson's death occurred in 1829, but it was not until 1836 that all the funds from this legacy were received. On July 1, 1836, Congress appropriated such funds for the purpose of founding the institution, but it was not definitely organized until ten years later. The act of 1846 intrusted the conduct of the Smithsonian Institution to a Board of Regents, consisting of the Vice President, the Chief Justice, the Mayor of Washington, three Senators, three Representatives, and six other persons. This board was empowered to elect one of its own number as Chancellor, and also to choose a suitable Secretary, who should take charge of the buildings of the Institution, discharge the duties of librarian and keeper of the museum, and employ the necessary assistants. The board was further authorized to appoint superintendents to supervise the erection of buildings and the fitting up of rooms, and was required to make an annual report to Congress concerning the conduct of the Institution.<sup>76</sup>

*Botanic Garden.* A deficiency appropriation act of May 15, 1850, provided for the removal of the public greenhouse and its botanical collection, at that time located on the Patent Office square, to some suitable site on the public grounds. A sum was granted for the erection of such additional building as might be deemed necessary by the Joint Committee on the Library, to be expended under the direction of that committee, and under the supervision of the Commissioner of Public Buildings. This establishment later became known as the National Botanic Garden. Provision for a Superintendent of the Botanic Garden was made in the act of March 3, 1873.<sup>77</sup>

<sup>76</sup> 9 Stat. L., 102.

<sup>77</sup> 9 Stat. L., 423, 427; 17 Stat. L., 485, 491; Revised Statutes (2 ed.), Sec. 1827; 31 Cong. 2 sess. (1850-51), H. ex. doc. 47. The date of the establishment of the public greenhouse in connection with the Patent Office is somewhat obscure, but it seems to have resulted from the removal to Washington in 1841 of the botanical collection of the Wilkes Expedition of 1838. This collection was originally owned by the National Institution, a scientific society of Washington organized in 1841. This society was discontinued upon the establishment of the Smithsonian Institution in 1841, and its botanical collection fell to the care of the Commissioner of Patents.—Bryan, History of the national capital, II, 325-26 (1916).

*Two-fold Significance of Detached Services.* Of the several independent or detached administrative agencies created prior to 1860, which can be said to have possessed any degree of permanence, two were later placed under the jurisdiction of an existing department, one was abolished in 1836, and the remainder continued as separate administrative services. The establishment of these independent agencies possesses a two-fold significance. In the first place, Congress was led to deviate from the departmental system of administrative organization, in providing for the discharge of duties which did not logically fall under the jurisdiction of any existing department, or which were considered of such importance as to require the immediate supervision of the President or of Congress itself. In so doing, Congress established a precedent for the creation of administrative services independent of any of the executive departments—a precedent which has been followed to a marked degree during the present century. In the second place, the exercise of joint supervision and direction over the work of these detached services by Congress and the President, and the representation of all the branches of government—legislative, executive, and judicial—in the personnel of several of these independent boards and commissions, serve to substantiate the observation made in the introduction to this monograph, namely, that governmental departments do not correspond exactly to governmental functions. Congress, which is chiefly concerned with the function of legislation, has imposed upon itself the direction and supervision of purely administrative services, and has associated its own representatives with those of the other major organs of government in the creation of boards and commissions charged with the performance of duties of an administrative character.

## CHAPTER IX

### THE DEPARTMENT OF THE INTERIOR

**Proposals for a Home Department.** The establishment of a "Home Department" or a "Department of Domestic Affairs" was definitely proposed in the Constitutional Convention of 1787. Gouverneur Morris, in his plan for a Council of State, provided for a Secretary of Domestic Affairs, whose business it should be to "attend to matters of general policy, the state of agriculture and manufactures, the opening of roads and navigations and the facilitating communications through the United States."<sup>1</sup> Charles Pinckney, in his "Observations," emphasized the necessity which existed at that time, and which must every day increase, "of appointing a Secretary for the Home Department."<sup>2</sup>

Proposals for such a department were also made outside of the convention. As early as 1783, Pelatiah Webster, in his pamphlet entitled *A Dissertation on the Political Union and Constitution of the Thirteen United States of North-America*, proposed a scheme of government which included a Secretary of State—an official who "takes knowledge of the general policy and internal government. . . . I mention a Secretary of State," he added, "because all other nations have one. . . . The multiplicity of affairs which naturally fall into his office will grow so fast, that I imagine we shall soon be under necessity of appointing one."<sup>3</sup> The plan of John Paul Jones for the proper organization of the executive establishment, of which mention was made in a preceding chapter, included a "Ministry of Home Affairs."<sup>4</sup>

In the course of the debates in the first Congress on the question of the proper number and arrangement of administrative departments, Mr. Vining of Delaware proposed, on several occasions, the establishment of a Home Department. Although the majority

<sup>1</sup> Farrand, *Records of the federal convention*, II, 342.

<sup>2</sup> *Ibid.*, III, 111.

<sup>3</sup> Webster, *Political essays*, 213-14.

<sup>4</sup> *Supra*, 89.

in Congress were not convinced of the necessity of creating an independent department for the administration of internal affairs, provision was made for a combination of the duties of a Home Department with those of Foreign Affairs in the act of September 15, 1790, creating the Department of State.<sup>5</sup> In considering the organization of the State Department, mention was made of the two divisions created in that department by Secretary Jefferson, namely, the "Home Office" and the "Foreign Office."<sup>6</sup>

On April 20, 1812, President Madison addressed a special message to Congress in which he called attention to the rapid accumulation of duties in the several departments of the government which had been necessarily augmented "in consequence of the peculiar state of our foreign relations, and the connection of these with our internal administration."<sup>7</sup> Although this message was especially directed toward the creation of two subordinate officers in the War Department, the suggestion which it contained led Congress to consider certain improvements in other departments. Thus on June 12, 1812, in a report submitted to the House of Representatives by a special committee appointed to inquire into the state and condition of the Patent Office, a subdivision of the Department of State, this definite proposal was made: "Your committee, without entering into any detailed reasoning on the subject, offer, for the consideration of the Legislature, the propriety and necessity of authorizing a *Home Department*, distinct from the departments already established by law. Such departments are known to other Governments, and their benefits have been recognized in territories far less extensive than those of the United States."<sup>8</sup> No action was taken by Congress, however, on this suggestion made by the committee relative to the establishment of a Home Department.

A resolution was introduced and adopted in the Senate on April 20, 1816, which directed the secretaries of the departments to report jointly to the Senate, at the next session of Congress, a plan to insure the annual settlement of the public accounts, and a more certain accountability of the public expenditure, in their respective departments.<sup>9</sup> In obedience to this resolution, the heads of the

<sup>5</sup> 1 Stat. L., 68. Cf. *Supra*, 90, 93, 98.

<sup>6</sup> *Supra*, 114-15.

<sup>7</sup> 12 Cong. 1 sess. (1811-12), *Annals of Congress*, Pt. 1, 209.

<sup>8</sup> *Ibid.*, Pt. 2, 2179.

<sup>9</sup> 14 Cong. 1 sess. (1815-16), *Annals of Congress*, 331-32.

four executive departments submitted a joint report to the Senate on December 9, 1816, in which they not only made important suggestions for the proper settlement of the public accounts, but also definitely proposed the establishment of another executive department. Commenting upon the administration of Indian affairs, the secretaries said: "It is obvious to the mind of every reflecting man that the duties imposed upon the Secretary of War in relation to the Indian Department have no rational connection with the administration of the military establishment. From the view which has been presented, it is conceived that the public interest requires that the Secretary of War should be relieved from further attention to these duties. It then becomes necessary to inquire whether those duties can, consistently with the public interest, be assigned to either of the other Departments. An examination into the duties required of those Departments, it is confidently believed, cannot fail to produce the most decided conviction that no additional duties ought to be imposed upon them under their present organization. On the other hand, there is good reason to believe that the public interest would be promoted by relieving those Departments of several branches of the public service at present committed to their respective charges. The retrenchments which, with great advantage to the public interest, might be made in the duties now imposed upon the Secretaries of the respective Departments and the General Post Office, would furnish ample employment for the head of another independent Department."<sup>10</sup>

In accordance with these observations, it was proposed that another executive department be organized, to be denominated the "Home Department," and that the Secretary of this department should execute the orders of the President in relation to: (1) The territorial governments; (2) the national highways and canals; (3) the General Post Office; (4) the Patent Office; and (5) the Indian Department. The concrete plan thus submitted for the establishment of a Home Department, which was in essence a "Cabinet" proposal, no doubt was the basis for the recommendation made by President Madison in his last annual message of December 3, 1816, presented six days prior to the communication of the above report to the Senate, when he declared that "the extent and

<sup>10</sup> 14 Cong. 2 sess. (1816-17), Annals of Congress, 26-28. Cf. American State Papers, Misc., II, 397-98.

variety of Executive business . . . call for an additional department, to be charged with duties now overburdening other departments and with such as have not been annexed to any department.”<sup>11</sup>

A committee of the House of Representatives appointed to consider the above recommendation made by President Madison, addressed a letter to the heads of departments on December 22, asking among other questions whether the accountability of public officers might not be sufficiently served without the establishment of a new department.<sup>12</sup> In reply to this particular query, the Secretaries said: “ . . . Although provision may be made for the settlement of all the public accounts without the institution of a new Department, we have no doubt that the just principles of accountability would be better preserved, and economy promoted, by the adoption of that measure. Equally satisfied are we that other essential advantages would result from it.”<sup>13</sup>

On January 6, 1817, a bill was introduced in the Senate calling for the establishment of a Home Department. The bill followed the proposal made by the heads of the departments the preceding year, except that the District of Columbia was introduced as a sub-division of the department, and the division of National Highways and Canals was omitted. The bill was opposed by Senator King of New York, who contended that “ no more security would be afforded by creating two Departments of State in the room of one, which he believed was sufficient to despatch all the business now confided to it ; most of which, being matter of detail only, required little more than the signature of the Secretary of State. . . . He could not see the necessity for creating a new department, the head of which would have a place in the Cabinet, and be one of the President’s counsellors.” The bill was defeated on January 29.<sup>14</sup>

The subject of a Home Department does not seem to have been taken up again in Congress until March 3, 1825, when a resolution was introduced in the House of Representatives proposing the establishment of such a department for the promotion of agriculture, manufactures, science and the arts, and trade between the

<sup>11</sup> 14 Cong. 2 sess., Annals of Congress, 15.

<sup>12</sup> *Ibid.*, 698.

<sup>13</sup> *Ibid.*, 699. Cf. American State Papers, Misc., II, 418.

<sup>14</sup> 14 Cong. 2 sess., Annals of Congress, 47, 59-60, 70, 74-75, 88.

states by roads and canals. The resolution was defeated without debate.<sup>15</sup>

President John Quincy Adams in his first annual message to Congress, dated December 6, 1826, again called attention to the need of an additional executive department. He declared that "the Departments of Foreign Affairs and of the Interior, which early after the formation of the government had been united, continue so united to this time, to the unquestionable detriment of the public service." Referring to President Madison's recommendation for the establishment of another department, he said: "The exigencies of the public service and its unavoidable deficiencies, as now in exercise, have added yearly cumulative weight to the considerations presented by him as persuasive to the measure, and in recommending it to your deliberations I am happy to have the influence of his high authority in aid of the undoubting convictions of my own experience."<sup>16</sup>

A special committee was appointed in the House of Representatives, with Daniel Webster as chairman, to take into consideration this portion of the President's message.<sup>17</sup> Webster called upon President Adams on December 16, to obtain his views with respect to the establishment of a new executive department. Adams' reply to his request for information, as recorded in the President's diary, was as follows: "I said if it was possible in

<sup>15</sup> 18 Cong. 2 sess. (1824-25), Register of Debates, I, 740. Mr. Learned takes note of an article written by Judge A. B. Woodward, which appeared on April 24, 1824, in the "National Journal," entitled On the Necessity and Importance of a Department of Domestic Affairs, in the Government of the United States. Judge Woodward, who seems to have been a writer of note upon the subject of administration, outlined an elaborate plan for the organization of such a department, which should include eight bureaus or divisions, namely, Science and Art, Public Economy, Posts, Public Lands, Mint, Patents, Indian Affairs, and Justice, each in charge of a Commissioner. In the Bureau of Public Economy he proposed to place the superintendence and execution of internal improvements, and such other matters as the care of unsettled public lands, conservation of forests, slavery, mines, fisheries and general police. "The scheme attracted widespread notice," says Learned, "and gained favorable comment here and there. But it lacked simplicity and failed to impress men high in administrative circles with its feasibility."—Learned, *op. cit.*, 266-67.

<sup>16</sup> Messages and papers of the presidents, II, 314-15. President Adams indicates in his Diary that this proposal was carefully discussed by the Cabinet before it was made public.—Cf. Memoirs of John Quincy Adams (ed. Adams), VII, 62-63.

<sup>17</sup> 19 Cong. 1 sess. (1825-26), Register of Debates, 797.

any manner to obtain this from Congress it must be by a very short act, expressing in very general terms the objects committed to it—the internal correspondence, the roads and canals, the Indians and the Patent Office. I referred him to the papers of Judge Woodward on a Home Department in the National Journal, but observed that was a plan upon a scale much too large for the approbation of Congress, to begin with. I have indeed no expectation of success with this Congress for any such establishment even upon the simplest plan.”<sup>18</sup>

Soon after his interview with President Adams, Webster addressed a letter on the subject of a Home Department to each of the four heads of departments. Secretary of State Clay expressed his approval of the plan for a new department and stated at some length the causes which seemed to him to make necessary the establishment of a Home Department. Secretary of War Barbour emphasized the desirability of relieving the head of the War Department from the duties connected with administration of pensions and Indian affairs. Secretary of the Treasury Rush refrained from expressing any decided opinion, on the ground that he was too inexperienced in the business of his own department, while Secretary of the Navy Southard did not see any necessity for transferring any of the duties of his department.<sup>19</sup> Clearly, the heads of departments were not as thoroughly convinced of the need for an additional department as were their predecessors in 1816. As it was proposed to take almost entirely from the Departments of State and War the duties to be assigned to the new department, it was only natural that the heads of those two departments should have evinced the most interest in the proposal. Both President Adams and Secretary Clay, although convinced of the necessity for such a department, were extremely skeptical as to the attitude Congress would take toward it.<sup>20</sup>

President Jackson also was impressed with the need for an additional executive department, although convinced that it would be futile to propose again such a measure to Congress. In his annual message of December 8, 1829, he commented upon this subject as follows: “The great and constant increase of business

<sup>18</sup> Memoirs of John Quincy Adams, VII, 84.

<sup>19</sup> *Ibid.*, VII, 108-09. Cf. 21 Cong. 1 sess. (1829-30), S. ex. doc. 109.

<sup>20</sup> Memoirs of John Quincy Adams, VII, 63.

in the Department of State forced itself at an early period upon the attention of the Executive. Thirteen years ago it was, in Mr. Madison's last message to Congress, made the subject of an earnest recommendation, which has been repeated by both of his successors; and my comparatively limited experience has satisfied me of its justness. It has arisen from many causes, not the least of which is the large addition that has been made to the family of independent nations and the proportionate extension of our foreign relations. The remedy proposed was the establishment of a home department—a measure which does not appear to have met the views of Congress on account of its supposed tendency to increase, gradually and imperceptibly, the already too strong bias of the federal system toward the exercise of authority not delegated to it. I am not, therefore, disposed to revive the recommendation, but am not the less impressed with the importance of so organizing that department that its Secretary may devote more of his time to our foreign relations. Clearly satisfied that the public good would be promoted by some suitable provision on the subject, I respectfully invite your attention to it.”<sup>21</sup>

The only effort made in Congress to comply with the President's suggestion was the introduction of a bill designed to reorganize the Attorney General's Office, which provided for the transfer to that office, from the Department of State, of the work of the Patent Office. The bill was defeated, partially through the efforts of those who insisted on the necessity of establishing a Home Department.<sup>22</sup>

No further attention was paid to this subject until 1845, when President Polk, in his first annual message to Congress, again emphasized the increased amount of public business which devolved on the heads of the several executive departments. “In some respects,” said Polk, “the distribution of duties among them seems to be incongruous, and many of these might be transferred from one to another with advantage to the public interest.” He particularly called attention to the desirability of relieving the Secretary of State from the duty of supervising the work of the Patent Office, and recommended the transfer of that bureau to the Attorney General's Office.<sup>23</sup> Congress failed to give heed to

<sup>21</sup> Messages and papers of the presidents, II, 461-62.

<sup>22</sup> 21 Cong. 1 sess. (1829-30), Register of Debates, VI, Pt. 1, 276, 322-24.

<sup>23</sup> Messages and papers of the presidents, IV, 414-15.

the recommendations of President Polk, however, possibly due, in part at least, to the advent of the war with Mexico.

Three years later, Secretary of the Treasury Walker, in his annual report to Congress, dated December 9, 1848, after pointing out the need for certain alterations in the organization of the executive departments, emphasizing particularly the defects in the organization of his own department, presented a definite plan for the establishment of a new department, which should be placed in charge of an officer "to be called the Secretary of the Interior, inasmuch as his duties would be connected with those branches of the public service . . . associated with our domestic affairs." He proposed to transfer from the Treasury Department to this new department the work of the General Land Office, and the supervision of the accounts of United States district attorneys and marshals. From the War Department, he recommended the transfer of the office of Indian Affairs and the Pension Office, and from the State Department, the supervision of the Patent Office.<sup>24</sup>

**Establishment of Department of the Interior.** A bill for the purpose of organizing a Department of the Interior was introduced in the House of Representatives on February 12, 1849, by the Chairman of the Committee on Ways and Means, who stated that it had been prepared by Secretary Walker at the special request of the committee. Consequently the measure embodied, in the main, the ideas of that officer, as outlined in his report submitted two months before. The bill encountered considerable opposition in both Houses of Congress. It was argued that to create a new department would increase considerably the federal patronage, that it would certainly add another cabinet officer to the government, and finally, that it meant the further extension of federal authority to the detriment of the states. On the contrary, those who favored the measure called attention to the repeated recommendations of former Presidents for the establishment of a Home Department, and contended that the creation of a new department was not aimed at an extension of federal power, but rather sought to reorganize the administrative departments in an effort to promote increased efficiency in their operation.<sup>25</sup>

<sup>24</sup> 30 Cong. 2 sess. (1848-49), H. ex. doc. 7, 35-37.

<sup>25</sup> 30 Cong. 2 sess. (1848-49), Congressional Globe, XVIII, 514, 516, 543, 670-80.

The bill passed both the House and the Senate and was signed by President Polk, on March 3, 1849. That the measure did not meet with the approval of the President is evidenced by the following extract taken from his diary and written several weeks after he had signed the bill: "I had serious objections to it, but they were not of a constitutional character and I signed it with reluctance. I fear its consolidating tendency. I apprehend its practical operation will be to draw from the states, where the Constitution has reserved it, and to extend the jurisdiction and power of the U. S. by construction to an unwarrantable extent. Had I been a member of Congress I would have voted against it."<sup>26</sup>

**Organization.** The act of 1849 provided for the creation of a new executive department, to be called the Department of the Interior; the head of which should be called the Secretary of the Interior. The appointment of the chief officer in the new department was vested in the President, with the consent of the Senate, and his tenure of office and salary were to be the same as those of the secretaries of the other executive departments. The act further provided for the transfer to the new department, from the Department of State, of the Patent Office and the supervisory power exercised by the Secretary of State over the acts of marshals and others in taking and returning the census; the General Land Office, from the Treasury Department, together with the supervisory power exercised by the head of that department over the accounts of the marshals, clerks, and other officers of the United States courts, and over the lead and other mines of the United States and the accounts of the agents thereof; the Offices of Commissioner of Indian Affairs and Commissioner of Pensions, from the War Department; and the supervisory power exercised by the President over the Commissioner of Public Buildings. The Secretary of the Interior was also authorized to exercise a supervisory power and control over the board of inspectors and warden of the penitentiary of the District of Columbia. The appointment of a chief clerk by the Secretary of the Interior was authorized, and the President was directed, upon the recommendation of the Secretary, to transfer to the new department such clerks in the office of the Secretary of the

<sup>26</sup> The diary of James K. Polk during his presidency (ed. Quaife), Chicago Historical Society, *Collections*, IX, 371-72.

Treasury as had performed the duties over which supervision and control were now given to the Secretary of the Interior. These clerks, together with those employed in the bureaus transferred to the new department, were thereafter to be subject to the removing power of the Secretary of the Interior.<sup>27</sup>

**Important Features of the Organic Act.** Several features of the act creating the Department of Interior deserve to be noted. In the first place, the department is named in the title of the act as "A Home Department," whereas the body of the act provided that it should be called "The Department of Interior." This incongruity was due to the passage of an amendment, during the debate on the bill, which substituted the title of "Home Department" for that of "Department of the Interior," in the title of the act.<sup>28</sup> Secretary of the Interior Ewing, in his first report to Congress, dated December 3, 1849, called attention to this discrepancy. "The title of the act," he said, "being the part last adopted in the process of enactment, is believed to express the intention of Congress as to the name. . . ."<sup>29</sup> His successor, Secretary Stuart, in his annual report of December 2, 1850, suggested that Congress remove the ambiguity, but nothing was done until the revision of the statutes in 1873.<sup>30</sup> The title of "Department of the Interior" was, however, used in subsequent legislation concerning that department.<sup>31</sup>

In the second place, the act did not expressly provide that the Secretary of the Interior should be subject to the general direction of the President. In this respect it differed from the acts establishing the Departments of State, War, and Navy, but was similar to the acts creating the Treasury Department and the Attorney General's Office. As has been noted with respect to the Secretary of the Treasury and the Attorney General, however, the Secretary

<sup>27</sup> 9 Stat. L., 395. Provision for the government of the Penitentiary for the District of Columbia was made in an act of March 3, 1829, which authorized the President to appoint a warden to oversee and manage the affairs of that institution, under the direction of a Board of Inspectors, composed of five inhabitants of the District of Columbia, appointed annually by the President. The number of inspectors was decreased to three and the warden of the penitentiary made appointive by the President, with the consent of the Senate, by act of February 25, 1831.—4 Stat. L., 365; 445.

<sup>28</sup> 30 Cong. 2 sess. (1848-49), Congressional Globe, XVIII, 554.

<sup>29</sup> 31 Cong. 1 sess. (1849-50), H. ex. doc. 5, 1.

<sup>30</sup> 31 Cong. 2 sess. (1850-51), H. ex. doc. 1, 19.

<sup>31</sup> Cf. Learned, *op. cit.*, 290.

of the Interior was recognized as subject to the direction of the President in the performance of his duties.<sup>32</sup> As anticipated in the debates on the bill to establish the new department, the Secretary of the Interior was included in the President's Cabinet.

The third distinctive feature of the act of 1849 is the fact that the various branches of public business assigned to the new department did not possess any logical relation to one another. Created from time to time, such services as the Patent Office, the General Land Office, the Pension Office, and the Office of the Commissioner of Indian Affairs, were assigned to a particular department not so much because of any consideration of fitness, but rather from the want of any more convenient destination to be given them. These and other services were now brought together in one department, again not because of their similarity of duties, but to relieve existing departments of work not suited to them. This grouping of unrelated services in one department has ever since been the predominant characteristic of the Department of the Interior.<sup>33</sup>

Finally, the duties and powers of the Secretary of the Interior were not definitely prescribed in any detail. Secretary of the Interior Stuart, in his annual report of December 2, 1850, dwelt upon this feature of the organization of the department, recommending that Congress prescribe more definitely the sphere of the department, so that conflicts with other departments might be avoided, and little or nothing be left to the mere discretion of the Secretary.<sup>34</sup>

**Organization of Secretary's Office.** The organization of the various bureaus transferred to the Department of the Interior has already been sufficiently described. Secretary Ewing, in his first annual report, requested that Congress provide a permanent force of ten clerks in his immediate office. It had been found impossible to transfer any clerks from the Treasury Department to the

<sup>32</sup> 6 Op. Atty. Gen., 332.

<sup>33</sup> In this respect the United States Department of Interior resembles the British Home Office. "The Home Office," according to Lowell, "is a kind of a residuary legatee. It is intrusted with all the work of the secretariat that has not been especially assigned to the remaining secretaries of state, or to the other administrative departments. Its duties are, therefore, of a somewhat miscellaneous character."—The government of England, I, 105 (1912).

<sup>34</sup> 31 Cong. 2 sess., H. ex. doc. 1, 19.

Interior Department, in accordance with the act of 1849, and the Secretary had been obliged to secure clerical assistance from the General Land Office, the Indian Office, and the Pension Office, to aid him in organizing the department.<sup>35</sup> A deficiency appropriation act of May 15, 1850, directed the transfer of clerks from other departments in proportion to the business transferred to the Department of the Interior, and provision was made in the general appropriation act of September 30, 1850, for the permanent clerical force requested by the Secretary of the Interior.<sup>36</sup>

**Superintendent of the Census; Chief Clerk; Disbursing Clerks.** An act of May 23, 1850, providing for the taking of the seventh and subsequent censuses by United States marshals, under the direction of the Secretary of the Interior, authorized the latter to appoint a superintending clerk to have general management of this work, under his direction. This officer received the title of Superintendent of the Census in subsequent legislation.<sup>37</sup> An act of March 3, 1853, reorganizing the clerical force of all administrative departments and bureaus, provided for a chief clerk in the Interior Department and in each of the four major subdivisions thereof, namely, the Pension Office, Patent Office, Indian Office, and General Land Office. The Secretary of the Interior was also authorized to appoint not more than three disbursing clerks in the department.<sup>38</sup>

**Government Hospital for the Insane; Institution for the Deaf, Dumb, and Blind.** Congress appropriated, by act of August 31, 1852, the sum of \$100,000 to enable the Secretary of the Interior, under the direction of the President, to purchase a site near the city of Washington, and to erect, furnish, and fit up an asylum for the insane of the District of Columbia and of the army and navy. Further appropriations for this purpose were made from year to year until March 3, 1855, when an act was passed for the organization of the Government Hospital for the Insane. The Secretary of the Interior was authorized to appoint a Superintendent, to act as the chief executive officer of the institution. Regulations for the conduct of the hospital were to be made, with the approval of

<sup>35</sup> 31 Cong. 1 sess. (1849-50), H. ex. doc. 5, 1.

<sup>36</sup> 9 Stat. L., 423, 424; 523, 527.

<sup>37</sup> 9 Stat. L., 428, 432; 10 Stat. L., 276.

<sup>38</sup> 10 Stat. L., 189, 211.

the Secretary of the Interior, by a Board of Visitors, consisting of nine citizens of the District of Columbia, appointed by the President. This board was required to report annually to the Secretary of the Interior concerning the condition of the institution.<sup>39</sup> The President and Board of Directors of the Columbia Institution for the Deaf, Dumb, and Blind, a private institution incorporated by act of Congress on February 16, 1857, were required to report annually to the Secretary of the Interior concerning the conduct and financial condition of that institution.<sup>40</sup>

**General Character of Organization.** The organization of the Department of the Interior, during the short period from the date of its establishment until 1860, was the result, not of continuous growth, beginning with administrative offices and bureaus established by departmental regulation or executive order, as was so characteristic of the organization of other departments, but of the arbitrary grouping of several already well-organized administrative services in one department. Returning to Professor Goodnow's differentiation of the various branches of administration, it will be observed that the first Congress of the United States, in organizing the administrative branch of the national government, failed to provide for a separate department charged with the conduct of internal affairs. Two factors contributed to the defeat of successive proposals in Congress for the establishment of a Home Department. In the first place, it was the general opinion of the early statesmen that the administration of foreign affairs would not be so arduous but that the Secretary of that department could also supervise the administration of purely domestic affairs. In the second place, domestic or internal affairs during this period were of relatively minor importance, as far as the national government was concerned. Under our federal system, such matters as police and public health administration, which, especially in Continental European countries, were the concern of the Minister of Interior, were reserved to the several states. Accordingly, these two branches of administration were united in the Department of State.

It was not until sixty years after the establishment of the first executive departments that Congress was convinced of the necessity

<sup>39</sup> 10 Stat. L., 76, 92; 682.

<sup>40</sup> 11 Stat. L., 161, 162.

for creating a separate department, charged with the conduct of domestic affairs. Although all of the duties imposed upon or transferred to the Department of the Interior in 1849 may be said to relate to that branch of administration designated by Goodnow as "Internal Affairs," they did not possess that degree of unity which makes for efficiency in administration. Doubtless, however, it was preferable to combine services unrelated to each other under one department, rather than to permit them to remain under departments whose essential concern was that of the administration of the army, the conduct of foreign affairs, or the control of the nation's finances.<sup>41</sup>

<sup>41</sup> It should be observed that not all of the administrative duties performed by the several departments with respect to internal or domestic affairs were transferred to the Department of the Interior in 1849. Thus, the State Department continued to have charge of the promulgation of the laws and the correspondence with the Governors of the States, while the Treasury Department performed a variety of duties relating to commerce and navigation which remained under its jurisdiction until the establishment of the Department of Commerce and Labor in 1903.

## CHAPTER X

### SUMMARY OF ADMINISTRATIVE ORGANIZATION PRIOR TO 1860

The development of national administrative organization prior to 1860 has been purposely subjected to a detailed study in the foregoing chapters because of its significance in the proper understanding and appreciation of the fundamental principles which underlie the existing system of administrative organization in the United States. The establishment of single-headed executive departments in 1789, which came as the almost inevitable result of the experience gained during the Revolutionary and Confederation periods, in providing an adequate system of organization for the administration of governmental affairs, laid the basis for the future development of national administration in the United States. The acts of the first Congress with respect to the organization of the administrative branch of the national government are surpassed in importance and significance only by the formulation and adoption of the Constitution itself.

The organization effected in 1789, however, proved to be inadequate in two particulars. The increased importance and scope of naval administration led Congress in 1798 to establish a Department of the Navy. It was not so much the growing importance of internal affairs, as it was the increased burdens imposed upon the three departments concerned with the administration of foreign affairs, finance, and military affairs, which necessitated relieving those departments from all extraneous administrative duties, that induced Congress to establish a Department of the Interior in 1849.

Throughout the period under consideration, the principle of single-headed control predominated, although the system of multiple control was not entirely absent. A considerable number of administrative boards and commissions were established from time to time, both within and outside of the main departments,

and the Treasury Department offers two examples of permanent administrative services which were subjected to the board form of organization, namely, the Steamboat-Inspection Service and the Lighthouse Service. The most important deviation from the single-headed system, however, is to be noted in connection with the Navy Department. During the period from 1815 to 1842 the affairs of that department were administered, under the direction of the Secretary of the Navy, by a board of three commissioners, who were collectively responsible for the proper performance of the duties of the department. The unwisdom of these departures from the system of single-headed control was later conclusively demonstrated. The system of single-headed bureaus was substituted for the Board of Navy Commissioners in 1842 at the urgent request of the Secretary of the Navy. The Steamboat-Inspection Service was also furnished with a single administrative head in 1871, at the request of the Secretary of the Treasury, although the Board of Supervising Inspectors was retained in a quasi-legislative capacity. The Lighthouse Service, although the subject of frequent criticism, was continued under the direction of a board until 1910.

Congress, except in the case of the Treasury Department, did not attempt to create subdivisions within the departments and to prescribe their duties, until urged to do so by the heads of departments themselves. As a result, administrative agencies were frequently created within the departments at the instance of their respective secretaries, which later received legislative recognition in acts of Congress. Finally, although only three of the seven principal administrative officers appointed by the President, with the consent of the Senate, were expressly made subject to the direction of the Chief Executive by congressional enactment, the subordination of all to that officer was firmly established by virtue of the removal power of the President, and by his constitutional duty to insure the faithful execution of the laws. This recognized subordination of the heads of departments to the President served to place the latter "at the head of the national administration," and made possible the association with him of these principal administrative officers in an advisory or cabinet council.

## OUTLINE OF ADMINISTRATIVE ORGANIZATION: 1860

*Department of State*<sup>1</sup>

Secretary  
 Assistant Secretary  
 Chief Clerk  
 Claims Clerk  
 Superintendent of Statistics  
 Diplomatic Bureau  
 Consular Bureau  
 Home Bureau  
 Translator and Librarian

*Department of War*

Secretary  
 Chief Clerk  
 Office of the Adjutant General  
 Office of the Quartermaster General  
 Office of the Paymaster General  
 Office of the Commissary General  
 Office of the Surgeon General  
 Office of the Chief Engineer  
 Office of Topographical Engineers  
 Office of the Colonel of Ordnance  
 Inspectors General—two of equal rank  
 Military Academy  
 Soldiers' Home

*Department of the Treasury*

Secretary  
 Assistant Secretary  
 Solicitor  
 Chief Clerk  
 Fiscal Bureaus  
 First Comptroller  
 Second Comptroller  
 Commissioner of Customs  
 First Auditor  
 Second Auditor  
 Third Auditor  
 Fourth Auditor  
 Fifth Auditor  
 Auditor for the Post Office Department  
 Register  
 Treasurer  
 Non-Fiscal Services  
 Coast Survey  
 Office of Construction of Standard Weights and Measures

<sup>1</sup> The bureaus of the Department of State, which had been organized by departmental order, were omitted from the official list from 1855 to 1870, but they continued to exist as a necessity in the business of the Department, and the chiefs continued to enjoy their titles and authority in Department Administration. The above organization is that which existed in 1855. Cf. Hunt, *The department of state*, 222 (1914).

## 222 NATIONAL ADMINISTRATIVE ORGANIZATION

Lighthouse Board

Board of Supervising Inspectors—Steamboat Inspection Service

Revenue Marine Service

Marine Hospitals

### *Department of the Navy*

Secretary

Chief Clerk

Bureau of Navy Yards and Docks

Bureau of Construction, Equipment and Repairs

Bureau of Provisions and Clothing

Bureau of Ordnance and Hydrography

Bureau of Medicine and Surgery

Office of Colonel Commandant, Marine Corps

Office of the Engineer-in-Chief, Engineer Corps

Naval Retiring Board

Naval Observatory and Hydrographic Office

Nautical Almanac Office

Naval Academy

### *Post Office Department*

Postmaster General

Chief Clerk

Assistant Postmaster General

Contract Office

Assistant Postmaster General

Appointment Office

Assistant Postmaster General

Inspection Office

Topographer

Dead Letter Clerk

Miscellaneous Division

### *Department of the Interior*

Secretary

Chief Clerk

General Land Office

Patent Office

Pension Office

Indian Office

Superintendent of the Census

Commissioner of Public Buildings

Government Hospital for the Insane

Columbia Institution for the Deaf, Dumb, and Blind

### *Attorney General's Office*

Attorney General

Assistant to the Attorney General

### *Detached Agencies*

United States Mint

Smithsonian Institution

Superintendent of Public Printing<sup>2</sup>

Library of Congress<sup>2</sup>

Botanic Garden<sup>2</sup>

<sup>2</sup> Under congressional supervision.

## II. ADMINISTRATIVE ORGANIZATION SINCE 1860



## CHAPTER XI

### THE DEPARTMENT OF STATE

In tracing the development of national administrative organization in the United States subsequent to 1860, no attempt will be made to present a thorough and detailed account of the alterations and innovations introduced in the various administrative departments and their respective subdivisions. On the contrary, an effort will be made to point out the more important changes effected in the general system of departmental organization, and to indicate the influences which have led to the establishment of additional administrative departments and, more particularly during the past decade, of detached bureaus and commissions. The establishment and organization of special administrative war agencies will be briefly reviewed in a separate chapter. Finally, an analysis of present proposals for the creation of additional administrative departments and bureaus, and especially the movement for the reorganization of the entire administrative branch of the national government, will be undertaken.

**Reorganization, 1870.** In the early development of the Department of State, a logical division of labor was effected at the instance and under the authority of successive heads of that department. Clerks who had demonstrated their special fitness for certain work were assigned to a particular group of duties. "This differentiation or division of labor," says Professor Mathews, "constituted, in embryo, that classification of the work of the department which later brought into existence the various bureaus."<sup>1</sup> The distribution of duties in the department effected by Secretary Forsyth in 1836 remained substantially unaltered until Hamilton Fish assumed control of the department in March, 1869.<sup>2</sup> The following year Secretary Fish, acting under his general authority

<sup>1</sup> Mathews, *The conduct of American foreign relations*, 43 (1922).

<sup>2</sup> *Supra*, 116.

as head of the department, ordered a redistribution of the duties assigned to the State Department.

Under Secretary Fish's directions, the department was divided into twelve bureaus, as follows: Chief Clerk's Bureau; First and Second Diplomatic Bureaus, under the general superintendence of the Assistant Secretary and the Second Assistant Secretary, respectively, but under the immediate direction of two bureau chiefs; First and Second Consular Bureaus, under the same arrangement as the diplomatic bureaus; Law Bureau, comprising simply the Examiner of Claims; Bureau of Accounts, managed by a disbursing clerk, who also acted in the capacity of superintendent of the department's building and property; Statistical Bureau, in charge of a librarian; Bureau of Translations, consisting merely of a translator for the department; Pardons and Commissions, in charge of a bureau chief; Domestic Records, comprising one clerk who served under the superintendence of the Assistant Secretary; and a Passport Bureau, in charge of a passport clerk. In addition to the clerical force employed in these bureaus, a number of unassigned clerks were engaged in the general work of the department, under the direction of the Chief Clerk, and a telegraph operator was employed in receiving and sending messages ordered by any of the secretaries or the Chief Clerk.<sup>3</sup>

It should be kept in mind that the chiefs of these various bureaus were not recognized as such in the appropriation acts relating to the department, but were merely given that title by authority of the Secretary. The divisions of the Diplomatic and Consular bureaus were made along geographical lines, and their arrangement possessed an added feature, in that the Assistant Secretary and the Second Assistant Secretary were definitely assigned the duty of supervising their work. This latter arrangement was continued, however, for a brief period of only three weeks.<sup>4</sup>

**Commissioner of Immigration; Examiner of Claims; Office of Superintendent of Statistics Abolished.** Some additional offices had been established in the State Department during the period from 1860 to 1870. On July 4, 1864, an act was approved to encourage immigration into the United States, the first section of

<sup>3</sup> Hunt, *The department of state*, 222-24 (1914).

<sup>4</sup> Hunt, *op. cit.*, 225.

which authorized the President to appoint a Commissioner of Immigration, who should be subject to the Secretary of State. This office continued under the State Department until its abolition by act of March 30, 1868.<sup>5</sup> Mention was made, in a preceding chapter, of the provision made in 1848 for a clerk in the State Department to examine claims presented by American citizens against foreign governments.<sup>6</sup> The office of Examiner of Claims was established by act of July 25, 1866, abolished by act of July 20, 1868, and re-established on May 27, 1870. The nominal jurisdiction of the office was transferred to the Department of Justice upon the organization of that department in 1870, although the nature of its duties remained unchanged. The title of the office was changed to Solicitor for the Department of State by act of March 3, 1891. The office of Second Assistant Secretary of State was also created by the act of July 25, 1866, while that of the Superintendent of Statistics, created by statute in 1856, was abolished by act of July 20, 1868.<sup>7</sup>

**Congressional Recognition of Organization.** Slight modifications in the organization of the department, as effected in 1870, were later made by Secretary Fish; namely, the creation of a separate mail division, and the substitution, for the Domestic Records Bureau, of a Territorial and Domestic Records Bureau in 1872, and the separation of the office of Keeper of Rolls from the Chief Clerk's Bureau in 1873.<sup>8</sup> Congress granted legislative recognition to the bureaus established in the State Department, for the first time, in an appropriation act of March 3, 1873, which provided for the salaries of the two chiefs of the diplomatic and Consular bureaus, and of the chiefs of the Bureaus of Accounts, and of Indexes and Archives.<sup>9</sup> In accordance with this provision, the Bureau of Indexes and Archives was organized and the Chief Clerk's Bureau abolished. Those bureaus created by departmental order, which were not recognized in this act, were retained by Secretary Fish, certain clerks in the department being assigned to act in the capacity of bureau chiefs.<sup>10</sup>

<sup>5</sup> 13 Stat. L., 385, 386; 15 Stat. L., 55, 58.

<sup>6</sup> *Supra*, 117.

<sup>7</sup> 14 Stat. L., 224, 226; 15 Stat. L., 92, 96; 16 Stat. L., 378; 26 Stat. L., 908, 945.

<sup>8</sup> Hunt, *op. cit.*, 226.

<sup>9</sup> 17 Stat. L., 485, 509.

**Statutory Changes in Organization.** Congress, having once recognized the internal organization of the State Department, frequently exercised its authority to introduce changes therein by subsequent legislation. The appropriation act of June 20, 1874, provided for only one Chief of the Consular Bureau and one Chief of the Diplomatic Bureau. Consequently the two divisions of those bureaus, established in 1870, were consolidated. The act of 1874 also provided for chiefs of four other bureaus, namely, Accounts, Statistics, Indexes and Archives, and Rolls and Library, and created the office of Third Assistant Secretary of State.<sup>10</sup> The office of Translator was recognized by act of March 3, 1875, in addition to the six chiefs of bureaus. This act also authorized the Secretary of State to designate the Chief of the Bureau of Accounts as the disbursing clerk for the department.<sup>11</sup>

The act of August 15, 1876, provided for only five bureau chiefs and the translator. Accordingly, the Secretary of State directed that the Bureau of Statistics be placed under the supervision of a clerk in the department. The act of June 19, 1878, made provision for only four chiefs of bureau in addition to the translator, which made it necessary to discontinue the office of the Chief of Rolls and Library, but a clerk in the department was designated as librarian, with the same duties as had pertained to that bureau. Statutory provision for these two bureaus was again made by acts of March 3, 1881, and August 5, 1882, respectively.<sup>12</sup>

**Bureau of Appointments.** No further changes were made in the organization of the department until 1898. A deficiency appropriation act, approved July 7, 1898, authorized the creation of a Bureau of Appointments, under the direction of a bureau chief. This bureau took the place of the Bureau of Commissions and Pardons established by Secretary Fish in 1870, the name of which had been changed to the Bureau of Commissions after the issuance of an Executive order by President Cleveland on June 16, 1893, transferring the duty of making out pardons for persons convicted of crimes against the laws of the United States from the Department of State to the Department of Justice.<sup>13</sup>

<sup>10</sup> 18 Stat. L., 85, 90.

<sup>11</sup> 18 Stat. L., 343, 349.

<sup>12</sup> 19 Stat. L., 143, 148; 20 Stat. L., 178, 183; 21 Stat. L., 385, 391; 22 Stat. L., 219, 225. Cf. Hunt, *op. cit.*, 229.

<sup>13</sup> 30 Stat. L., 652. Cf. Hunt, *op. cit.*, 130.

**Bureau of Foreign Commerce Transferred to Department of Commerce and Labor; Bureau of Trade Relations.** Upon the recommendation of the Chief of the Bureau of Statistics, the name of that bureau was changed to the Bureau of Foreign Commerce by a departmental order issued by Secretary of State Sherman on July 1, 1897.<sup>14</sup> An act of February 14, 1903, establishing a Department of Commerce and Labor, provided for the transfer to that department of the Bureau of Foreign Commerce. Section 11 of that act authorized the Secretary of State to appoint a suitable person "to formulate, under his direction, for the instruction of consular officers, the requests of the Secretary of Commerce and Labor; and to prepare from the dispatches of consular officers, for transmission to the Secretary of Commerce and Labor, such information as pertains to the work of the Department of Commerce and Labor." Such person was to be given the rank and salary of a chief of bureau, and be furnished with such clerical assistants as might from time to time be authorized by law. Acting under the authority of this provision, and upon the recommendation of the Chief of the Bureau of Foreign Commerce, a Bureau of Trade Relations was organized in the State Department on July 1, 1903.<sup>15</sup>

**Bureau of Citizenship.** A provision in the appropriation act of February 25, 1903, for eight bureaus permitted the elevation of the Passport Bureau to a plane of equality with the other bureaus in the department. This bureau, which was first created by order of Secretary Fish in 1870, continued in charge of the passport clerk until 1898, when it was placed under the Bureau of Accounts, because the bond of the chief of that bureau was made to cover the fees for passports which the passport clerk collected. The Passport Bureau was separated from the Bureau of Accounts and

<sup>14</sup> The authority upon which the Secretary issued this order was a provision in the diplomatic and consular appropriation act of February 20, 1897, granting to the Secretary the power to change the name of the Bureau of Statistics to the Bureau of Foreign Commerce.—29 Stat. L., 579, 590. In recommending to the Secretary the exercise of this authority, the Chief of the Bureau of Statistics called especial attention to the confusion arising from the fact that there were three bureaus of statistics in the executive departments, and, furthermore, as the work of that bureau in the State Department was exclusively commercial in character, the designation as a Bureau of Statistics was misleading. Cf. Hunt, *op. cit.*, 233-35; Consular Reports (September, 1897), No. 204, Vol. 55, 1.

<sup>15</sup> 32 Stat. L., 825, 827, 830.

placed directly under the supervision of the Secretary, the Assistant Secretaries, and the Chief Clerk, by order of Secretary Hay issued on July 3, 1902.<sup>16</sup> Upon the recommendation of the Chief of the Passport Bureau, and because of the increased importance of the duties of that bureau with respect to the expatriation of citizens and their protection abroad, Secretary Root issued an order on May 31, 1907, changing the name of the Passport Bureau to the Bureau of Citizenship.<sup>17</sup>

An appropriation act of April 17, 1900, authorized the appointment, by the Secretary of State, of an Assistant Solicitor, and an additional Assistant Solicitor was appropriated for under the act of June 22, 1906. The act of April 17, 1900, also provided for a second translator in the State Department.<sup>18</sup> The office of Law Clerk, with the duty of editing the statutes, was created by act of June 22, 1906, which authorized the appointment, by the Secretary of State, of a law clerk and an assistant.<sup>19</sup>

**Reorganization, 1909.** A reorganization of the Department of State was effected in 1909. Prior to that time, successive Secretaries of State had repeatedly called the attention of Congress to the inadequate personnel and organization of the department to perform properly its ever-increasing volume of business. Elihu Root, who was appointed to the position of Secretary of State by President Roosevelt in 1905, is said to have remarked that "he was like a man trying to conduct the business of a large metropolitan law-firm in the office of a village squire."<sup>20</sup> Secretary Root, under his general authority as head of the department, assigned to the Chief

<sup>16</sup> 32 Stat. L., 854, 867. Cf. Hunt, *op. cit.*, 239.

<sup>17</sup> *Ibid.*, 241-42.

<sup>18</sup> 31 Stat. L., 86, 97; 34 Stat. L., 389, 402. Attention is called to the fact that, although the office of the Solicitor of the Department of State, under the act of 1870, was placed under the supervision and control of the Attorney General, as the head of the Department of Justice, the acts providing for assistant solicitors vested their appointment in the Secretary of State.

<sup>19</sup> 34 Stat. L., 399, 402. This statutory provision for the Law Clerk's office was preceded by the creation of that office through a departmental order. An editor of the laws, which was the title given to the law clerk prior to 1903, was first appointed in 1874. The salary of that officer was paid out of the general appropriations for editing, printing, and distributing the laws.—Cf. Hunt, *op. cit.*, 282-283.

<sup>20</sup> Reorganizing the department of state, *Nation*, Vol. 89, 294 (September 30, 1909).

Clerk, in addition to his other duties, the direction of the Consular Service, and intrusted the supervision of Far Eastern Affairs to the Third Assistant Secretary of State.<sup>21</sup>

On January 12, 1909, Senator Knox of Pennsylvania offered an amendment to the appropriation bill, at that time before the Senate, providing for an Undersecretary of State and a Fourth Assistant Secretary. This amendment was favorably reported to the Senate on January 13 by the Committee on Foreign Relations, and was adopted, but met defeat in the House of Representatives.<sup>22</sup> On August 5, 1909, however, during a special session of the Sixty-first Congress, provision was made in a deficiency appropriation bill for defraying the necessary expenses incurred in connection with foreign trade relations which came within the jurisdiction of the Department of State, and for the maintenance of a Division of Far Eastern Affairs in that department. The Secretary of State was directed to submit to Congress, at its next regular session, a detailed statement of expenditures, including salaries or rates of compensation paid, under this appropriation.<sup>23</sup>

In accordance with, and under authority of, this act, the offices of Counselor, Resident Diplomatic Officer, and Director of the Consular Service were created by order of Secretary Knox. Five new divisions were also organized in the department, namely, the Division of Latin-American Affairs, the Division of Far Eastern Affairs, the Division of Near Eastern Affairs, the Division of Western European Affairs, and the Division of Information. An Assistant Solicitor and a Law Clerk were added to the legal force of the department, and provision was also made for a sufficient number of additional clerks and messengers.<sup>24</sup> This arrangement was reported to Congress at the next regular session, and in the appropriation act of June 17, 1910, separate provision was made for the offices thus created.<sup>25</sup>

<sup>21</sup> Outline of the organization and work of the department of state, 9 (1911).

<sup>22</sup> 60 Cong. 2 sess. (1908-09), Congressional Record, Vol. 43, Pt. 1, 792, 838, 887; Pt. 2, 1296; Pt. 3, 2571; Pt. 4, 3743.

<sup>23</sup> 36 Stat. L., 118, 119.

<sup>24</sup> Outline of the organization and work of the department of state, 12-16.

<sup>25</sup> 61 Cong. 2 sess. (1909-10), Congressional Record, Vol. 45, Pt. 1, 113; 36 Stat. L., 468, 484.

**Statutory Changes in Organization, 1912-1916.** No immediate change was made in the arrangement of bureaus in the department by the reorganization of 1909. The appropriation act of August 23, 1912, provided for only seven chiefs of bureaus, with the result that the Bureau of Trade Relations was abolished. Two Trade Advisers, first appointed under the act of August 5, 1909, took over the duties formerly discharged by the chief of that bureau, and with the clerks of the bureau, formed the Office of Foreign Trade Advisers. This act also failed to make any provision for the salary of the Resident Diplomatic Officer, which necessitated the discontinuance of that office.<sup>26</sup> A Division of Mexican Affairs was established on July 28, 1915.<sup>27</sup> One of the foreign trade advisers was removed from that office on January 31, 1916, and placed at the head of the Office of the Adviser on Commercial Treaties.<sup>28</sup>

**Alterations in Organization during the War Period.** Although the conduct of foreign relations during the period of the World War imposed additional duties of great magnitude upon the State Department, the organization of the department was not materially altered. The increased vigilance with respect to persons entering into and departing from the United States, made necessary by war conditions, added greatly to the work of the Bureau of Citizenship. That bureau was charged with the enforcement of the act of May 22, 1918, "to prevent in time of war departure from or entry into the United States contrary to the public safety." Under authority of a provision in a deficiency appropriation act of October 6, 1917, a Passport Bureau at the Port of New York, in charge of a Passport Agent, was established on December 15, 1917, as a branch of the Bureau of Citizenship. A similar bureau was established at San Francisco on July 1, 1918, for the maintenance of which an appropriation was voted in the act of July 3, 1918.<sup>29</sup> The Bureau of Citizenship was abolished by departmental order of August 13, 1918, which provided for the creation of a Division of Passport Control and a Visa Office.<sup>30</sup> Two other changes were made

<sup>26</sup> 37 Stat. L., 360, 372-73. Cf. Hunt, *op. cit.*, 247.

<sup>27</sup> Department of state personnel and organization (hereinafter cited as "Personnel and organization"), 29 (1921).

<sup>28</sup> Register of the department of state, 26 (1916).

<sup>29</sup> 40 Stat. L., 345, 346; 559; 757, 770.

<sup>30</sup> Personnel and organization, 30, 32.

in the organization of the department during the war period, namely, the enlargement of the duties of the Division of Information, the title of which was changed to the Division of Foreign Intelligence on May 7, 1917, and the establishment of a Correspondence Bureau in the office of the Second Assistant Secretary of State on July 1, 1918.<sup>31</sup>

**Important Changes in Organization, 1919-1923.** A number of important changes have been introduced in the State Department since the termination of hostilities in November, 1918. The title of the Counselor for the Department of State was changed to the Undersecretary of State by act of March 1, 1919.<sup>32</sup> A Division of Russian Affairs was established by order of August 13, 1919, and a Division of Political Information by order dated February 6, 1920.<sup>33</sup> The duties of the War Trade Board, and the moneys previously appropriated for that service, were transferred to the Department of State by act of July 19, 1919. A War Trade Board Section was organized in the department, provision for which was made in the deficiency appropriation act of March 1, 1921.<sup>34</sup> The Office of the Adviser on Commercial Treaties was discontinued on March 1, 1920, and the designation of Correspondence Bureau in the office of the Second Assistant Secretary was discontinued on June 15, 1920.<sup>35</sup>

The act of March 3, 1921, making appropriations for the Department of State, omitted any provision for chiefs of bureaus in the department. The act permitted, however, the assignment of officers employed in the department on important drafting work as heads of bureaus as well as heads of divisions.<sup>36</sup> A thorough re-arrangement of the department was effected following the passage of that act. The offices of Law Clerk and of Translator, as separate agencies in the department, were discontinued. The

<sup>31</sup> Register of the department of state, 1917, 25; 1918, 29.

<sup>32</sup> 40 Stat. L., 1213, 1224.

<sup>33</sup> Personnel and organization, 30. Congressional directory (May, 1920), 304.

<sup>34</sup> 41 Stat. L., 163; 1156, 1159.

<sup>35</sup> Personnel and organization, 24. Secretary of State Lansing, prior to his resignation on February 13, 1920, was reported to have completed plans for the reorganization of the State Department. The nature of this proposed reorganization, however, was not disclosed.

<sup>36</sup> 41 Stat. L., 1252, 1263.

former was transferred on May 13, 1921, to the new Division of Publications, created on that date, with the title of Editor of Laws. The Bureau of Rolls and Library was also abolished and its duties transferred to this new division. The Office of Translator was organized as a section in the Chief Clerk's Office. The War Trade Board Section was also located in the latter office, but it has since been abolished pursuant to the provision in Section 501 of the Dye and Chemical Control Act, approved May 27, 1921, which transferred its duties to the Secretary of the Treasury. An Office of Ceremonials was organized as a section in the Office of the Third Assistant Secretary.<sup>27</sup>

The Division of Political and Economic Information was organized on May 24, 1921, in the place of the Divisions of Foreign Intelligence and Political Information, and a Division of Current Information was also created on that date. Passport bureaus at the ports of Chicago, New Orleans, and Seattle were established on July 1, 1921, in charge of Passport Agents, subject to the supervision of the Division of Passport Control. The title of the Office of Foreign Trade Adviser was changed to that of Economic Adviser by order of the Secretary, dated December 20, 1921.<sup>28</sup>

**Distribution of Supervisory Work.** The Undersecretary of State and the Assistant Secretaries have been definitely assigned to supervise certain of the administrative divisions and bureaus in the department. The former is charged with the general direction of the work of the department and of the foreign service. The Assistant Secretary supervises the Office of Economic Adviser and the Division of Far Eastern Affairs and the Division of Russian Affairs. The Second Assistant Secretary has direct supervision over his immediate office, including the reviewing, coördinating, and mailing branch of the office (formerly the Correspondence Bureau), and over the Division of Passport Control and the Visa Office. The Third Assistant Secretary is charged with the direction of the work of the Division of Near Eastern Affairs, Diplomatic Bureau, Bureau of Accounts, and Bureau of Appointments.<sup>29</sup>

<sup>27</sup> Personnel and organization, 26-27, 33; 42 Stat. L., 9, 18. Secretary of the Treasury, Annual report on the state of finances, 1921, 118, 434.

<sup>28</sup> Personnel and organization, 32, 33. A short account of the department of state, 40 (1922).

<sup>29</sup> Personnel and organization, 23-24.

**Predominant Characteristic of Organization.** The foregoing survey of the rapid changes which have occurred in the organization of the Department of State, especially since 1909, serves to indicate what may be said to be the predominant characteristic of administrative organization in that department, namely, the almost unrestricted authority of the Secretary of State over the appointment of administrative officers and the distribution of the duties of the department. The administrative divisions, bureaus, and offices in the department, with the exception of the offices of the Undersecretary, the Assistant Secretaries, the Director of the Consular Service, and the Solicitor, have all been created by departmental order and are subject to change at any time at the discretion of the Secretary of State. It should also be observed that the distinction between bureaus and divisions, which pertains in the other executive departments, is not consistently maintained in the State Department; nor is the allotment of authority between divisions and bureaus always clearly defined. Thus the various divisions in the department relating to the diplomatic service are not, in any sense, subordinate to the Diplomatic Bureau, and the division of duties between them and the latter bureau is not sharply drawn.

No mention has been made, in describing the organization of the State Department, of the diplomatic and consular services. Although parts of an integral system for the conduct of foreign affairs, they are not branches of the central organization of the State Department. Nor has any attention been paid to the several international commissions, such as the Governing Board of the Pan American Union, the United States Section of the Inter-American High Commission, the International Boundary Commission, United States and Canada, and the International Boundary Commission, United States and Mexico, on which the State Department is represented, but which are not, strictly, subdivisions of that department.

## CHAPTER XII

### THE DEPARTMENT OF WAR

**Organization during the Civil War.** The vast military operations of the Civil War, involving a corresponding increase in the scope of administrative duties, made necessary the enlargement of existing bureaus and the creation of new agencies in the War Department. The task of supervising the administrative affairs of the department proved to be beyond the capacity of the Secretary of War, unaided, to perform. Accordingly, an army officer was detailed, by order of the Secretary of War, to act as Assistant Secretary of War.<sup>1</sup> This action was supplemented by the act of August 3, 1861, which authorized the appointment by the President, with the consent of the Senate, of an Assistant Secretary of War. Two additional Assistant Secretaries were authorized, for one year, by act of January 22, 1862. The President was empowered, by act of February 20, 1863, to appoint, with the consent of the Senate, a Solicitor for the War Department. The office of Second Assistant Secretary was created, for one year, by act of January 19, 1864, and was continued for another year by act of February 20, 1865.<sup>2</sup> The Assistant Secretary acted as the immediate adviser of the Secretary of War, while matters of special importance were intrusted to the supervision of the other Assistant Secretaries.<sup>3</sup>

The organization of the existing staff departments or military bureaus was not materially altered during the period of the war, although their official and clerical force was augmented, from time to time, to perform the increased amount of work imposed upon them.<sup>4</sup> The office of Signal Officer of the Army was created by

<sup>1</sup> Ingersoll, *History of the war department*, 345 (1880).

<sup>2</sup> 12 Stat. L., 287; 332; 656; 13 Stat. L., 1; 431.

<sup>3</sup> Ingersoll, *op. cit.*, 345.

<sup>4</sup> Cf. Acts of August 3 and 6, 1861 (12 Stat. L., 287; 318); April 16, and December 27, 1862 (12 Stat. L., 378; 633); February 9, 1863 (12 Stat. L., 648); and March 3, 1865 (13 Stat. L., 513). The most comprehensive act

act of June 21, 1860, and the Signal Corps, in charge of a Chief Signal Officer, was provisionally established by act of March 3, 1863.<sup>5</sup> The act of July 17, 1862, authorized the appointment of a Judge Advocate General, which officer was placed at the head of a Bureau of Military Justice by act of June 20, 1864.<sup>6</sup> The Corps of Topographical Engineers, as a distinct branch of the War Department, was abolished by act of March 3, 1863, being merged with the Engineer Corps, under the direction of the Chief Engineer.<sup>7</sup>

Several new bureaus were temporarily created in the War Department for the administration of certain extraordinary duties imposed upon that department during the war period. Under authority of an act approved on January 31, 1862, which empowered the President, whenever in his judgment the public safety might require it, to take possession of the railroad lines in the United States, and to operate them under military control, an Executive order was issued on February 10, 1862, creating the office of Military Director and Superintendent of Railroads.<sup>8</sup> An act of March 3, 1863, "for enrolling and calling out the national forces," provided for the appointment of a Provost Marshal General, whose office should constitute a separate bureau of the War Department.<sup>9</sup> The general employment of colored troops having been authorized by act of February 24, 1864, a Bureau for Colored Troops was established, to have charge of the recruitment of volunteer colored soldiers.<sup>10</sup> A Bureau of Refugees, Freedmen, and Abandoned Lands was established by act of March 3, 1865, under the supervision of a Commissioner appointed by the President, with the consent of the Senate, which was charged with the management of all abandoned lands and the control of all subjects relating to refugees and freedmen from rebel states.<sup>11</sup>

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relating to any of the staff departments and passed during the war period was the act of July 4, 1864, which provided for the establishment of nine administrative divisions within the Quartermaster Department.—13 Stat. L., 394.

<sup>5</sup> 12 Stat. L., 64, 66; 744, 753.

<sup>6</sup> 12 Stat. L., 597, 598; 13 Stat. L., 144, 145.

<sup>7</sup> 12 Stat. L., 743.

<sup>8</sup> 12 Stat. L., 334. Cf. Upton, *Military policy of the U. S.*, 430-31 (1904).

<sup>9</sup> 12 Stat. L., 731.

<sup>10</sup> 13 Stat. L., 6, 11. Cf. Ingersoll, *op. cit.*, 352.

<sup>11</sup> 13 Stat. L., 507.

**Reorganization on a Peace Time Basis.** The cessation of hostilities in 1865 led to the reorganization of the War Department upon a peace time basis. The organization of the several staff departments was provided for by act of July 28, 1866, fixing the military peace establishment. This act abolished the office of Solicitor of the War Department, and also directed the discontinuance of the Provost Marshal General's Office and Bureau within thirty days after the passage of the act. Permanent provision was made for the Bureau of Military Justice and the Signal Corps, and the President was authorized to appoint a superintendent for each national cemetery purchased and enclosed by his order, under authority of an act of July 17, 1862.<sup>12</sup> The business of the office of the Director and General Manager of Military Railroads gradually diminished and was finally absorbed by the Quartermaster Department, following the issuance of an Executive order on August 8, 1865, directing that all military railroads be returned to their original owners.<sup>13</sup>

The supervision of the United States Military Academy was transferred from the Corps of Engineers to the War Department by act of July 13, 1866, which provided that the Superintendent of the Academy might be selected from any branch of the service, and that the supervision and charge of the Academy should be in the War Department, under such officer or officers as the Secretary of War might assign to that duty.<sup>14</sup> The act of 1865 establishing the Freedmen's Bureau was continued in force by act of July 16, 1866, and by subsequent acts until June 30, 1872, when its unfinished business was turned over to the Adjutant General's Department.<sup>15</sup> The act of March 2, 1867, abolishing the office of Commissioner of Public Buildings, transferred the duties of that officer to the Chief Engineer of the Army.<sup>16</sup> The Bureau for Colored Troops,

<sup>12</sup> 14 Stat. L., 332; 12 Stat. L., 594, 596. By War Department order of August 20, 1866, the Provost Marshal General's Office was discontinued on August 28, 1866, and the business of that office transferred to the Adjutant General's Department. Cf. Legislative history of the general staff, 680 (1901).

<sup>13</sup> 39 Cong. 2 sess. (1866-67), H. ex. doc. 1, 297.

<sup>14</sup> 14 Stat. L., 90, 92.

<sup>15</sup> 14 Stat. L., 173; 15 Stat. L., 83; 193; 16 Stat. L., 8; 17 Stat. L., 347, 366.

<sup>16</sup> 14 Stat. L., 440, 466.

which had been placed under the general supervision of the Adjutant General's Office, was finally closed on June 30, 1879.<sup>17</sup>

**Defects in Organization.** In spite of the tasks of exceptional magnitude which confronted the staff departments during the Civil War in organizing, equipping, and supplying an army suddenly increased from about ten thousand to ultimately more than one million men in actual service, Secretary of War Stanton deemed it proper, in his annual report for 1865, to call special attention to the efficient conduct of civil duties in the War Department, which were so essential to the success of military operations in the field<sup>18</sup> Admitting, however, the individual efficiency of the various staff bureaus, the system of military administration in vogue during the war lacked two very important elements, namely, unity of command and administration, and proper coördination among the military bureaus in the War Department. Throughout the war, the staff departments performed their various duties under the immediate direction of the Secretary of War. The principle enunciated by Attorney General Cushing in 1855, namely, that "as a general rule, the direction of the President is to be presumed in all instructions and orders issuing from the competent department" when applied to the War Department, placed the Secretary of War in actual command of the army.<sup>19</sup> Acting for the President as commander-in-chief, he assumed not only the control of civil but of military operations as well. It was only natural, therefore, that the chiefs of the staff departments should look to the head of

<sup>17</sup> Legislative history of the general staff, 663n (1901).

<sup>18</sup> 39 Cong. 1 sess. (1865-66), H. ex. doc. 1, Vol. III, Pt. 1, 47. "By the heads of the respective bureaus of the War Department and their staffs the government has been served with a zeal and fidelity not surpassed by their brethren in the field. To them the honors and distinction of an admiring public have not been opened, but in their respective vocations they have toiled with a devotion, ability and success for which they are entitled to national gratitude."

<sup>19</sup> 7 Op. Atty. Gen., 453, 482. Attorney General Wirt on July 6, 1820, declared as follows: "By the Constitution, the President is made Commander-in-Chief of the Army and Navy of the United States. The Department of War and of the Navy are the channels through which his orders proceed to them, respectively, and the Secretaries of those Departments are the organs by which he makes his will known to them. The orders issued by those officers are, in contemplation of law, not their orders, but the orders of the President of the United States." Cf. 1 Op. Atty. Gen., 380; Upton, *op. cit.*, 367.

the War Department for instructions, rather than to the general commanding the army. "Not only was the authority of the Commanding General of the Army denied by bureau chiefs," says General Carter, "but complaints were constantly made concerning their interference with the several parts of the line of the army by giving orders direct to staff officers serving under the general officers commanding the army."<sup>20</sup>

The question of the respective powers of the Secretary of War and the Commanding General of the Army, especially with respect to the work of the staff departments, was the subject of prolonged controversy both during and after the Civil War. This matter could not be effectively dealt with by statutory enactment, because of the President's constitutional authority with respect to the military forces, and because the acts of the Secretary of War in the administration of the military establishment must necessarily be received as the acts of the Chief Executive. The powers and duties of the Commanding General must, therefore, depend, at all times, on his assignment by the President.<sup>21</sup> President Grant, who had experienced the difficulties encountered by the Commanding General in attempting to coördinate the work of the staff bureaus with the field forces during the Civil War, authorized his Secretary of War on March 5, 1869, to assign General Sherman to command the army, and to order that all official business requiring the action of the President or Secretary of War should be submitted through the Commanding General. When a new Secretary of War assumed office a few days later, however, that portion of the order of March 5, 1869, which gave the Commanding General control over the bureau chiefs, was revoked.<sup>22</sup>

The second apparent defect in the system of military administration, namely, the lack of proper coördination among the bureaus in the War Department, was due to the absence of a directing and coördinating professional authority in the scheme of army organization. Each of the staff bureaus was concerned with its own immediate tasks, without any special regard for, or knowledge of, the work of the other bureaus. General Halleck served during a por-

<sup>20</sup> Carter, *The American army*, 193 (1915).

<sup>21</sup> Cf. Report from the joint committee on the reorganization of the army, 45 Cong. 3 sess. (1878-79), S. rep. 555, Pt. 2, 435.

<sup>22</sup> *Ibid.*, 414.

tion of the war period as a professional adviser to the President and the Secretary of War, but his authority did not extend to the coördination and supervision of the technical work of the staff bureaus. It was not until the costly blunders of another great military conflict had conclusively demonstrated the necessity of a thorough reorganization within the War Department, that an adequate remedy was found for these and other defects in the system of military administration.<sup>23</sup>

**Administrative Organization, 1870-1898.** Very few changes of importance in the organization of the War Department were effected, following the close of the Civil War period, until the beginning of the twentieth century. Several acts were passed relating to the composition of the staff departments, but these did not materially change their organization.<sup>24</sup> A joint resolution of February 9, 1870, extended the work of the Signal Corps to embrace the taking of meteorological observations. This added duty, however, was transferred to the Weather Bureau in the Department of Agriculture by act of October 1, 1890.<sup>25</sup> The office of Inspector of National Cemeteries was created in the War Department under authority of Section 4876 of the Revised Statutes, which empowered the Secretary of War to detail an army officer to visit annually all national cemeteries and report their condition to him. This office was abolished by act of July 24, 1876.<sup>26</sup>

The first statutory provision for divisions in the immediate office of the Secretary of War was made in an act of June 20, 1874, which authorized the appointment of two chief clerks of divisions. The title of Chief of Division was authorized by act of June 15, 1880.<sup>27</sup> A large number of divisions were created in the War Department, however, in charge of clerks in that department, for which no

<sup>23</sup> A bill was proposed by the Joint Committee on the Reorganization of the Army, appointed under an act of June 18, 1878, which sought to define the respective powers and duties of the Secretary of War and the General of the Army, and their relation to the work of the staff departments, but the bill failed of enactment. Cf. 45 Cong. 3 sess. (1878-79), S. rep. 555, Pt. 2, 7-8.

<sup>24</sup> Acts of June 23, 1874 (18 Stat. L., 244); March 3, 1875 (18 Stat. L., 338; 478); June 26, 1876 (19 Stat. L., 61); February 28 and March 1, 1887 (24 Stat. L., 434; 435).

<sup>25</sup> 16 Stat. L., 369; 26 Stat. L., 653.

<sup>26</sup> 19 Stat. L., 97, 99; Revised Statutes, 951.

<sup>27</sup> 18 Stat. L., 85, 99; 21 Stat. L., 210, 226.

statutory provision had been made.<sup>28</sup> The office of Assistant Secretary of War, which had been abolished by act of March 2, 1867, was reestablished by act of August 5, 1882. It was again discontinued by act of July 7, 1884, but revived by act of March 5, 1890.<sup>29</sup> The Bureau of Military Justice and the Corps of Judge Advocates of the Army were consolidated under the designation of Judge Advocate General's Department by act of July 5, 1884.<sup>30</sup> A Record and Pension Division, first created by departmental order in July, 1889, was established as a bureau of the War Department, with the title of Record and Pension Office by act of May 9, 1892. On July 1, 1899, the War Records Office, which had been created by departmental order in January, 1878, was merged with the Record and Pension Office.<sup>31</sup>

A number of boards and commissions were established by statutory enactment, which were placed under the immediate supervision of the Secretary of War. An act of March 3, 1873, provided for the establishment of a military prison, to be governed by a board under the direction of the Secretary of War.<sup>32</sup> A board of Ordnance and Fortification was established by act of September 22, 1888, composed of the Commanding General of the Army, an officer of Engineers, an officer of Ordnance, and an officer of Artillery, to be selected by the Secretary of War and to be subject to his direction and control.<sup>33</sup> The act of August 19, 1890, establishing a national military park at the battle field of Chickamauga, empowered the Secretary of War to appoint three commissioners, who should have charge of the park, subject to his supervision and direction. Similar commissions under the direction of the Secretary of War were authorized by act of December 27, 1894, establishing a national military park at Shiloh; by act of February 11, 1895, establishing a national military park at Gettysburg, and by act of February 21, 1899, establishing the Vicksburg National Park.<sup>34</sup>

<sup>28</sup> 50 Cong. 1 sess. (1887-88), S. rep. 507, 23 *et seq.*

<sup>29</sup> 14 Stat. L., 422, 423; 22 Stat. L., 219, 237; 23 Stat. L., 159, 179; 26 Stat. L., 17.

<sup>30</sup> 23 Stat. L., 113.

<sup>31</sup> 26 Stat. L., 228, 250; 27 Stat. L., 27. Cf. Van Tyne and Leland, Guide to the archives of the government of the U. S. in Washington, 107-08 (1907).

<sup>32</sup> 17 Stat. L., 582.

<sup>33</sup> 25 Stat. L., 489.

<sup>34</sup> 26 Stat. L., 333, 334; 28 Stat. L., 597; 651; 30 Stat. L., 841.

Mention was made in a previous chapter of the Board of Commissioners of the United States Soldiers' Home.<sup>35</sup>

Several commissions, established to prosecute certain public projects, were required to make their reports to the Secretary of War. The Mississippi River Commission created by act of June 28, 1879, the Missouri River Commission created by act of July 5, 1884, and the California Debris Commission established by act of March 1, 1893, are typical of these commissions, which were, in whole or in part, composed of army engineers.<sup>36</sup> The United States Military Academy and the army post at West Point were made a separate military department by General Order No. 15, March 2, 1877, the commander to report directly to the General-in-Chief of the army, and to have supervision of the Academy. This arrangement was discontinued by General Order No. 77, 1882, effective September 1, 1882, which gave to the Superintendent the immediate government and military command of the Academy.<sup>37</sup> Mention should also be made of the various military schools established by War Department orders during this period to give instruction in various branches of military service, namely, the Artillery School at Fort Monroe, Virginia, established in 1867; the Infantry and Cavalry School at Fort Leavenworth, Kansas, established in 1881; the Cavalry and Light Artillery School, organized at Fort Riley, Kansas, in 1892; the Army Medical School, established at Washington, D. C., in 1893; and the Engineer School, established in 1897 at Fort Totten, New York.<sup>38</sup>

**The Department during the Spanish-American War.** The outbreak of the Spanish-American War in 1898 found the War Department unprepared to meet the difficult problems connected with the distribution, transportation, and mobilization of the army. This lack of previous study and preparation resulted in hasty, ill-digested action, thereby seriously hampering the efficient conduct of the war. In an attempt to meet this situation a board composed of three army officers was appointed by order of April 13, 1898, just a few days prior to the declaration of war, to formulate and recommend plans

<sup>35</sup> *Supra*, 135-36.

<sup>36</sup> 21 Stat. L., 37; 23 Stat. L., 144; 27 Stat. L., 507.

<sup>37</sup> Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 1282-83.

<sup>38</sup> *Ibid.*, 1310, 1308, 1314, 1387, 1275.

for calling into service a volunteer force. The report of this board was desired immediately, and was therefore submitted on April 14. It was concerned principally with the employment of the volunteer and regular forces, and their concentration for organization and instruction.<sup>39</sup> While partially meeting the emergency, this hurriedly framed report could not take the place of a well-defined plan for the organization and effective employment of the military forces. Inadequate equipment, lack of sufficient transportation facilities, inexperienced officers, and the absence of any authority to coördinate properly the work of the staff departments, resulted in many costly blunders, and greatly retarded the successful prosecution of the war.

Several acts were passed during the short period of the duration of this war providing for the organization and personnel of the staff departments.<sup>40</sup> Especial mention should be made of the act of July 7, 1898, relating to the Quartermaster's Department, which authorized the Secretary of War, during the period of the war and not exceeding one year thereafter, to make a proper distribution of the duties of the Quartermaster's Department, and to assign a suitable officer to each of the divisions thus created.<sup>41</sup>

**Detail of Line Officers to Staff Departments.** One of the most serious defects in the system of army organization was remedied by the act of February 2, 1901, entitled "An Act to increase the efficiency of the permanent military establishment of the United States." This act, which provided for the permanent organization of the staff departments, required that all future vacancies occurring in these departments, except that of the chief of the department, should be filled by detail from the line of the army. All officers so detailed were to serve for a period of four years and upon the expiration of that time to return to duty with the line; those below the rank of lieutenant-colonel not to be eligible for reappointment to a staff department until they had served two years with the line. The President was authorized to appoint, with the consent of the Senate, officers of the army at large not below the rank of lieutenant-colonel to vacancies occurring in the posi-

<sup>39</sup> Carter, *op. cit.*, 206 *et seq.*

<sup>40</sup> Acts of May 18, July 1, July 5, and July 7, 1898 (30 Stat. L., 419; 571; 652; 714; 715; 720); March 2, 1899 (30 Stat. L., 977).

<sup>41</sup> 30 Stat. L., 714.

tion of chief of any staff department, who should hold office for terms of four years. The above provisions, however, were not made applicable to the Engineer and Medical departments.<sup>42</sup>

Prior to the passage of the act of 1901, assignments to positions in the staff departments were permanent, and the higher positions in each bureau were filled by the promotion of officers already in the bureau. This system tended to create a body of permanent administrative officers more or less out of touch with the spirit and requirements of the field forces, and caused them to forfeit the respect of the line of the army. President Monroe, under whose administration the staff departments were first organized upon a permanent basis, felt confident that the appointment of army officers as chiefs of these bureaus would be sufficient to keep alive a military spirit.<sup>43</sup> Subsequent experience in military administration, however, had proved that a provision for the periodic return of staff officers to duty with the line was essential in maintaining a spirit of coöperation and sympathetic understanding between these two branches of the military department.

**General Staff Corps; Office of Chief of Staff.** An innovation of far-reaching importance with respect to the efficient administration of military affairs was introduced by the act of February 14, 1903, which established a General Staff Corps, with a Chief of Staff, who, under the direction of the President or the Secretary of War, should have supervision of all troops of the line and of the various staff departments. The General Staff Corps, which was to be composed of officers detailed from the army at large under rules prescribed by the President, was charged with the preparation of plans for the national defense and for the mobilization of the military forces in time of war, the investigation of all questions affecting the efficiency of the army and its state of preparation for military operations, the rendering of professional aid and assistance to the Secretary of War and to general officers and other superior commanders, and acting as their agents in informing and coöordinating the action of all officers made subject by this act to the supervision

<sup>42</sup> 31 Stat. L., 748, 755. This innovation with respect to the personnel of the staff departments had been earnestly recommended by Secretary of War Root in his annual report for 1899. Cf. *Five years of the war department, 1899-1903* (hereinafter cited as "Five years"), 64.

<sup>43</sup> *Supra*, 132.

of the Chief of Staff. All officers detailed to the General Staff Corps were to hold office for a period of four years, unless sooner relieved, and were made ineligible for further detail in that corps until they should have served two years with the branch of the army in which they were commissioned, except in case of emergency or in time of war.

This important legislation was the culmination of years of agitation upon the part of well-informed military men, but Congress was moved to action just at this time because of the disclosures made by the commission appointed by the President to investigate the conduct of the War Department in the war with Spain, and by the forceful recommendations made by Elihu Root, at that time Secretary of War. The commission, in its report, declared that "for many years the divided authority and responsibility in the War Department had produced friction, for which, in the interest of the service, a remedy, if possible, should be applied. The Constitution makes the President the Commander-in-Chief of the army, and he cannot transfer that authority to any other person. The President selects a Secretary of War, who is his confidential adviser. . . . The President must have the same power of selection of his General-in-Chief as he has of his Secretary of War; without this there can be no guarantee that he will give, or that the Secretary of War will place in the General-in-Chief, that confidence which is necessary to perfect harmony. Neither the President nor the Secretary of War should have in command of the army an officer who is not working in harmony with him."<sup>44</sup>

Secretary Root, in his annual report for 1899, recommended the establishment of an Army War College, to be composed of the heads of the staff departments, together with a number of the ablest and most competent officers detailed for service therein, whose duty it should be to direct the instruction of the army, to acquire information, and to advise the Commander-in-Chief on questions of

<sup>44</sup> 56 Cong. 1 sess. (1899-1900), S. ex. doc. 221, 115. General Schofield, a prominent military commander during the Civil War, and successor to Edwin M. Stanton as Secretary of War, testified before the commission as follows: "Recent experience has served to confirm all of the results of my life-long study and large experience, that the proper position for the senior officer of the army on duty at Washington is not that of a Commanding General, a position which is practically impossible, but that of General-in-Chief, which means in fact Chief of Staff to the President."

armament, transportation, and mobilization. He proposed to combine with the War College the existing Military Information Division of the Adjutant General's Department, and to entrust to its management all of the army service schools.<sup>45</sup> An appropriation to meet the expenses connected with the establishment of an Army War College, having for its object "the direction and coördination of the instruction in the various service schools, extension of the opportunity for investigation and study in the army and militia of the United States, and the collection and dissemination of military information," was voted by Congress in an act of May 25, 1900.<sup>46</sup>

A War Department order issued on November 27, 1901, provided for the organization of a War College, under the direction of a board of five officers, to be detailed from the army at large, and the following *ex officio* members: Chief of Engineers, Chief of Artillery, Superintendent of the United States Military Academy, and the commanding officer of the General Service and Staff College. Secretary Root, in commenting upon the organization of the War College, expressed the conviction that the establishment of such an institution and the duties imposed upon it was probably as near an approach to the organization of a General Staff as was practicable under the existing law. He therefore strongly urged upon Congress the establishment by law of a General Staff, of which the War College Board should form a part.<sup>47</sup>

In his annual report for 1902, Secretary Root undertook a thorough analysis of the existing system of military administration, in order to convince Congress of the necessity for creating a General Staff Corps. "The most important thing to be done now for the Regular Army," declared the Secretary, "is the creation of a general staff. . . . Our system makes no adequate provision for the directing brain which every man must have to work successfully. Common experience has shown that this cannot be furnished by any single man without assistants, and that it requires a body of officers working together under the direction of a chief and en-

<sup>45</sup> Five years, 62-63. The Military Information Division was created by General Orders 23, 1892, and placed in charge of an officer in the Adjutant General's department. Cf. Checklist, 1306.

<sup>46</sup> 31 Stat. L., 191, 209. This appropriation was allowed to lapse, but a further appropriation was provided for the same object in the act of March 2, 1901.—31 Stat. L., 895, 903.

<sup>47</sup> Five years, 161, 165.

tirely separate from and independent of the administrative staff of an army. . . ." <sup>48</sup> The passage of the act of February 14, 1903, was due, in large measure, to the persistent efforts of the Secretary of War, aided by the testimony of experienced army officers, and was the culmination of a series of important reforms effected in the organization of the War Department, following the Spanish-American War.

**Bureau of Insular Affairs.** Several new administrative agencies in the War Department, which were established about this time, deserve to be noted. The vast amount of work imposed upon the War Department by the acquisition of insular possessions during the War with Spain made necessary the immediate establishment of an administrative division in the department to relieve the Secretary of War of the burden of details connected with the military occupation and later the building up of a system of civil government in those islands. Accordingly, a Division of Customs and Insular Affairs was created by order of the Secretary of War, issued on December 13, 1898. The title of this division was changed to the Division of Insular Affairs by order of the Secretary dated December 10, 1900. The name was again changed by act of July 1, 1902, which provided for a Bureau of Insular Affairs in the War Department, to have charge of all matters pertaining to civil government in island possessions of the United States subject to the jurisdiction of that department.<sup>49</sup> Secretary Root, referring to the Division of Insular Affairs in his annual report for 1901, said: "It performs, with admirable and constantly increasing efficiency, the great variety of duties, which, in other countries, would be described as belonging to a colonial office, and would be performed by a much more pretentious establishment."<sup>50</sup>

**Office of Chief of Artillery; Board of Engineers for Rivers and Harbors.** The recommendation of Secretary Root as to the advisability of providing a head for the artillery branch of the army was embodied in the act of February 2, 1901, which provided for the organization of an Artillery Corps composed of two branches—the coast artillery and the field artillery—and the selection by the

<sup>48</sup> *Ibid.*, 292-93.

<sup>49</sup> Checklist, 1253; 32 Stat. L., 691, 712.

<sup>50</sup> Five years, 237.

President of a Chief of Artillery, whose duties should be prescribed by the Secretary of War. In accordance with this act the office of Chief of Artillery was organized in the War Department, and the duties of that office prescribed by the Secretary of War in an order issued on April 9, 1901.<sup>51</sup> A permanent Board of Engineers for Rivers and Harbors was created in the office of the Chief of Engineers by act of June 13, 1902, to be composed of five engineer officers detailed from the Engineer Corps of the army. The act directed that all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement should be referred to this board by the Chief of Engineers, for consideration and recommendation. The board was given authority to rent suitable quarters and engage civil employees, with the approval of the Chief of Engineers.<sup>52</sup>

**Adjutant General's Office.** Only a few changes of importance in the administrative organization of the War Department occurred during the period from 1903 to 1916. By act of April 23, 1904, the Adjutant General's Department and the Record and Pension Office were consolidated into one bureau, to be known as the "Military Secretary's Office." The Adjutant General's Office, since the creation of the General Staff Corps with a Chief of Staff at its head, had ceased to be anything more than a repository for military records and a bureau of orders of the army. Thus the title of Military Secretary's Office was more in accord with the actual duties performed therein. The title of the Military Secretary's Office was again changed to that of the Adjutant General's Office by act of March 2, 1907, but without change of duties.<sup>53</sup>

**Board of Road Commissioners for Alaska.** An act of January 27, 1905, provided for a Board of Road Commissioners in Alaska, to be composed of an engineer officer of the United States Army detailed and appointed by the Secretary of War and two other engineer officers stationed in Alaska and designated by the Secretary of War, to have charge of the construction, repair, and maintenance

<sup>51</sup> *Ibid.*, 66, 151; 31 Stat. L., 748, 749.

<sup>52</sup> 32 Stat. L., 331, 372. The present organization and activities of the Office of the Chief of Engineers may be found in Institute for Government Research, The Office of the Chief of Engineers, Ch. II and III (1923).

<sup>53</sup> 33 Stat. L., 259, 262; 34 Stat. L., 1158.

of military and post roads, bridges, and trails in the Territory of Alaska. The work of the board is carried on under the direction of the Secretary of War and the Chief of Engineers.<sup>54</sup>

**Chief of Coast Artillery; National Militia Board.** The title of the Chief of Artillery was changed to the Chief of Coast Artillery by act of January 25, 1907, which provided for the separation of the field artillery from the coast artillery. The Chief of Coast Artillery was added to the General Staff Corps, and was directed to perform such other duties as might be prescribed by the Secretary of War. A National Militia Board composed of five officers on the active list of the organized militia, appointed by the Secretary of War for a period of four years and selected with a view to securing equitable representation for all sections of the United States, was established by act of May 27, 1908, to consult with the Secretary of War respecting the condition, status, and needs of the whole body of the organized militia.<sup>55</sup>

**Quartermaster Corps; Aviation Section of the Signal Corps.** Section 3 of the army appropriation act approved August 24, 1912, provided for the consolidation of the office establishments of Quartermaster General, the Commissary General, and the Paymaster General into a single bureau of the War Department, to be known as the Quartermaster Corps. An act of July 18, 1914, to increase the efficiency of the aviation service of the army, created an Aviation Section as a part of the Signal Corps.<sup>56</sup>

**Panama Canal.** Congress, by act of June 28, 1902, created the Isthmian Canal Commission, to be composed of seven members appointed by the President with the consent of the Senate, which should have charge of the construction of the canal under the general direction of the President. Under authority of the act of April 28, 1904, providing for a temporary government of the canal zone, the President issued an Executive order on May 9, 1904,

<sup>54</sup> 33 Stat. L., 616; 34 Stat. L., 192; 42 Stat. L., 68, 90; Congressional directory (January, 1923), 388.

<sup>55</sup> 34 Stat. L., 861; 35 Stat. L., 399, 403.

<sup>56</sup> 37 Stat. L., 569, 591; 38 Stat. L., 514. The consolidation of the three supply departments had been the subject of repeated recommendations by experienced army officers, and the subject was given especial attention by Secretary Root in his annual report for 1901, and by Secretary Stimson in 1911. Cf. Five years, 165; War Department, Annual reports, 1911, I, 157.

placing the commission under the jurisdiction of the Secretary of War and defining its functions as the governing body of the Canal Zone. Anticipating the completion of the canal, Congress, by act of August 24, 1912, authorized the President by Executive order to discontinue the Isthmian Canal Commission and to provide a permanent governmental organization for the Canal Zone, with a governor at its head. In accordance with this act the President issued an Executive order on January 27, 1914, abolishing the Isthmian Canal Commission on April 1, 1914, and vesting the completion, maintenance, operation, and sanitation of the canal and the government of the Canal Zone in a Governor, an Executive Secretary, and Departments of Operation and Maintenance, Purchasing, Supply, Accounting, and Health. The Governor was given full control over the operation of the departments, subject to the supervision of the Secretary of War, and was authorized to create additional departments and agencies with the approval of the President.<sup>57</sup> Although nominally under the supervision of the Secretary of War, the Governor submitting his annual reports to that officer, the government of the Panama Canal functions virtually as an independent organization, maintaining a General Purchasing Office in Washington entirely separate from the War Department.

**Reorganization of General Staff Corps.** The General Staff Corps, as first organized under the act of 1903, comprised three divisions. The First Division was engaged in the formulation of reports upon a great variety of administrative matters arising in the line and staff departments. The Second Division was charged with the collection, classification, preparation, and distribution of military information. The Third Division, in addition to its duties as part of the personnel of the Army War College, exercised supervision over the entire educational system of the army.<sup>58</sup> A reorganization of the General Staff was effected on June 27, 1908. Two sections replaced the three divisions previously organized, the First Section having similar duties to those exercised by the former First Divi-

<sup>57</sup> 32 Stat. L., 481; 33 Stat. L., 429; 37 Stat. L., 569; 42 Stat. L., 1004; Treaties and acts of Congress relating to the Panama Canal, 30-33, 34-35, 79-87 (1921); Executive orders relating to the Panama Canal, 20-26, 35-42, 155-58 (1921). For the present governmental organization in the Canal Zone, see the Annual report of the Governor of the Panama Canal, 1921, 53-81.

<sup>58</sup> War Department, Annual reports, 1905, I, 369 *et seq.*; 1907, I, 184.

sion, and the Second Section taking over the duties of the Second and Third Divisions.<sup>59</sup>

By General Order No. 68, 1911, the Chief of Staff was authorized to arrange his office in four divisions, as follows: (1) The Mobile Army Division; (2) the Coast Artillery Division; (3) the Division of Militia Affairs; and (4) the War College Division. The heads of these four divisions were to be designated as assistants to the Chief of Staff. The status of the Chief of Staff as the military adviser to the Secretary of War, and the duties of his office as the supervising military bureau of the War Department, were clearly defined in this order.<sup>60</sup> The Division of Militia Affairs, formerly a branch of the Adjutant General's Office, had been transferred by order of February 12, 1908, to the immediate office of the Secretary of War. By act of March 3, 1911, which provided that the Chief of the Division of Militia Affairs should be detailed from the general officers of the line of the army, and while so serving should be an additional member of the General Staff Corps, this division was transferred to the office of the Chief of Staff.<sup>61</sup> The principal feature of the change made in 1911 was that the assistants to the Chief of Staff, in charge of each division, were permitted to handle purely routine matters without bringing them to the personal attention of the Chief of Staff, thereby giving the latter more time for the consideration of large questions of military policy and organization.

**National Defense Act, 1916.** The National Defense Act of June 3, 1916, was the first of a series of important statutory enactments passed during the significant period from 1916 to 1920, which, supplemented by departmental orders and regulations, introduced a large number of changes in the administrative organization of the War Department. To attempt a detailed study of the changes effected in the system of military administration during this comparatively brief period, marked especially by the entrance of the United States into the World War, would greatly exceed the scope of this monograph. An effort will be made, however, to outline the more important changes and innovations, with a view to pointing

<sup>59</sup> *Ibid.*, 1908, I, 358.

<sup>60</sup> *Ibid.*, 1911, I, 135. Cf. Compilation of general orders, circulars and bulletins of the war department (1881-1915), 386 *et seq.*

<sup>61</sup> Checklist, 1450; 36 Stat. L., 1037.

out the chief lines of development in the administrative organization of the War Department.

*Militia Bureau.* The act of June 3, 1916, authorized the creation of one additional bureau in the War Department, namely, the Militia Bureau. This bureau, which was substituted for the existing Division of Militia Affairs in the office of the Chief of Staff, was placed under the immediate supervision of the Secretary of War, and the act expressly provided that it should not form part of any other bureau, office, or organization in the War Department. The Chief of the Militia Bureau was made an *ex officio* member of the General Staff Corps. The National Militia Board created by act of 1908 was abolished.<sup>62</sup>

*Organization and Powers of General Staff Corps.* The most important provision of the act of 1916, however, with respect to military administration, was that concerning the organization and powers of the General Staff Corps. The act directed that the Mobile Army Division and Coast Artillery Division in the Office of the Chief of Staff should be abolished, and should not be reestablished. The act further directed that the business previously transacted in these two divisions should be transferred to the Office of the Chief of Coast Artillery, to the Adjutant General's Office, and to any other bureau or bureaus concerned, and should be thereafter conducted exclusively by or under the direction of the respective heads of those bureaus, subject to the exercise of the supervising, coöordinating, and informing powers conferred upon the members of the General Staff Corps by the act of 1903. Finally, the act expressly limited the members of the General Staff Corps to the discharge of the duties of a general nature intrusted to them by this act and the act of 1903, and declared that they should not be permitted "to assume or engage in work of an administrative nature that pertains to established bureaus or offices of the War Department, or that, being assumed or engaged in by members of the General Staff Corps, would involve impairment of the responsibility or initiative of such bureaus or offices, or would cause injurious or unnecessary duplication of or delay in the work thereof."<sup>63</sup>

<sup>62</sup> 39 Stat. L., 166, 203.

<sup>63</sup> 39 Stat. L., 166, 168.

Secretary of War Baker, in his annual report for 1916, called especial attention to this section of the act of June 30, which he understood was intended to remove the difficulties and misunderstandings growing out of the introduction of the General Staff system and the resulting transfer of authority and independence from a series of uncoördinated administrative offices into a harmonized and coördinated body, under the supervision and control of a single administrative officer. Embarrassing questions had often arisen as to how far the functions of the Chief of Staff invaded the administrative independence of the bureau chiefs. The scope and effect of Section 5 of the act of 1916 also seemed to be open to question, in that it might be interpreted to limit the Chief of Staff and his associates to the consideration of questions of military policy, and deprive them of that basis of knowledge necessary for the performance of any coördinating function. Such an interpretation according to Secretary Baker, would have involved practically a return to the old system of independent bureau organization. Such, in effect, was the interpretation placed upon this section by the Judge Advocate General. But the Secretary of War after a thorough examination of the various acts relating to the powers and duties of the General Staff Corps, came to the following conclusion: ". . . The structure of the General Staff created in 1903 remains as then created, except for explicit modifications provided in the act of 1916. . . . The Chief of the General Staff is charged with the supervision of the various departments, bureaus, and offices of the War Department for the purpose of coördinating their activities and for the purpose of so informing the judgment of the Secretary of War that he may not, by inadvertence or unfamiliarity with military practice, take action which would be prejudicial to harmonious results in the military service."<sup>64</sup>

**Changes in Department Organization during the World War.** In noting the rapid changes in administrative organization within the War Department, following the declaration of war with Germany on April 6, 1917, account will be taken only of those agencies which were denominated as "divisions" of the Secretary's Office

"War Department, Annual reports, 1916, I, 50 *et seq.* For the complete opinions of the Secretary of War and the Judge Advocate General, see *Ibid.*, 70-80, 80-89.

or of the Office of the Chief of Staff, together with those services which were elevated to the status of separate subdivisions of the War Department, whose heads were directly responsible to the Secretary of War or the Chief of Staff. These divisions and offices were organized as administrative hierarchies, being subdivided into branches, sections, and subsections. The agencies set up by the Council of National Defense to act with the War Department in an advisory capacity will be noted in a later chapter dealing with separate war agencies.

*Provost Marshal General; Aircraft Board; War Credits Board; War Council.* The changes in the administrative organization of the War Department during the year 1917 were chiefly in the direction of the creation of new divisions within the existing bureaus and offices of the department. This was especially true of the Quartermaster Department.<sup>65</sup> The Judge Advocate General was detailed on May 22, 1917, as Provost Marshal General, to have charge of the administration of the Selective Service Act.<sup>66</sup> Although the Provost Marshal General's Office was organized in the Judge Advocate General's Department, it was in reality a distinct administrative service, with its head reporting directly to the Secretary of War. An Acting Judge Advocate General was appointed to take charge of that department during the war period. An act of October 1, 1917, provided for the creation of an Aircraft Board, consisting of civilians and army and navy officers, to supervise and direct the purchase, production, and manufacture of aircraft and materials therefor.<sup>67</sup> A War Credits Board was created by the Secretary of War in November, 1917, for the administration of the provisions of Section 5 of the urgent deficiencies act of October 6, 1917, which authorized the Secretary of War, as

<sup>65</sup> For a brief survey of these changes, see Fairlie, War department organization, *American Political Science Review*, XII, 699 *et seq.* (November, 1918.) The Quartermaster General's Office on April 6, 1917, included five divisions, subdivided into twenty-five branches. The same office on June 15, 1918, was organized with fifteen divisions, including a total of seventy-five subdivisions and branches. Cf. War Department, Annual reports, 1918, 267 *et seq.* (Chart No. 2).

<sup>66</sup> War Department, Annual reports, 1917, I, 15, 215.

<sup>67</sup> 40 Stat. L., 296. An Aircraft Production Board had previously been established on May 16, 1917, by the Council of National Defense, to act as an advisory body to the Secretary of the Navy and the Chief Signal Officer of the Army. Cf. War Department, Annual reports, 1917, 39, 838.

well as the Secretary of the Navy, to advance payments to contractors for supplies out of appropriations therefor, and in amounts not exceeding 30 per cent of the contract price of such supplies.<sup>68</sup> A War Council composed of the Secretary of War, the Assistant Secretary, the Chief of Staff, and the heads of a number of the staff departments was organized on December 20, 1917, by General Order No. 160, to oversee and coördinate all matters of supply of the field armies and the military relations between the armies in the field and the War Department.<sup>69</sup>

*Proposed Reorganization.* The necessity for a reorganization of the War Department to meet the enormous increase of duties imposed upon it had become increasingly evident during the first year of the war. General March, Chief of Staff, stated the problem as follows, in his annual report for 1919: "Under the system of separate and independent bureaus, as organized when we entered the war, a condition of affairs eventually and inevitably developed which threatened the very success of any extensive military program. Each bureau, absorbed in the tremendous expansion of its personnel and in its problems of supply, naturally concentrated every effort upon the development of a program which would meet every possible requirement that might be imposed upon that particular bureau without reference, in general, to the requirements either of other bureaus or services, or of the army program as a whole. With this independent and uncorrelated action of the different bureaus the defects of the existing bureau system soon became manifest."

Among the defects enumerated by General March were the following: (1) Competition for manufactured articles, raw material, and labor among the bureaus of the department; (2) congestion in the placing of contracts and the location of new manufacturing plants; (3) lack of unity in the procurement of supplies and the handling of accounts; (4) absence of any agency for determining questions of priority among the different bureaus for manufactured articles or raw materials; and (5) lack of an effective system of traffic control. To remedy these defects, according to General March, it was necessary to provide for: "(1) A redistribution of

<sup>68</sup> 40 Stat. L., 345, 383. Official Bulletin No. 231 (February 11, 1918), 4.

<sup>69</sup> Official Bulletin No. 186 (December 17, 1917), 1.

existing functions of various bureaus in such a manner as to consolidate important similar or identical functions in the one agency best adapted to handle them; (2) the creation of certain new agencies to handle matter previously handled by existing bureaus but not logically a part of their function, and the creation of certain new services found to be necessary as the result of the developments and experiences of the army overseas; (3) the reorganization of the General Staff in such a manner as to enable it to perform its proper functions of an effective central controlling agency to coördinate and to control all existing War Department agencies and services so as to eliminate lost motion and to direct their activities in such a manner as to further to best advantage the development and the execution of the military program as a whole."<sup>70</sup>

*Embarkation Service; Inland Traffic Service; Director of Purchases.* The War Department had taken steps providing for a reorganization of this character, to the extent authorized by existing legislation, during the latter part of 1917 and the beginning of 1918. A large number of new divisions had been created in the staff departments and bureaus, and several new agencies had been organized in the office of the Chief of Staff. An Embarkation Service was erected in the latter office by General Order No. 102, August 4, 1917, to take charge of embarkation matters for all supply bureaus of the War Department. This service was transferred by General Order No. 167, December 28, 1917, to the Storage and Traffic Service of the General Staff, created by that order. On January 10, 1918, a Division of Inland Transportation was organized, as a part of the Storage and Traffic Service. The title of this division was changed to the Inland Traffic Service by order of April 22, 1918.<sup>71</sup> General Order No. 5, January 11, 1918, created in the Office of the Chief of Staff the Office of Director of Purchases, which was given general oversight of the acquisition by purchase or otherwise of all supplies and munitions required for the use of the army.<sup>72</sup>

*Construction Division; Tank Corps.* The Cantonment Division, which was first organized on May 17, 1917, and given substantially the status of an independent organization, although subordinate

<sup>70</sup> War Department, Annual reports, 1919, I, 245-47.

<sup>71</sup> *Ibid.*, 347-48, 394.

<sup>72</sup> Official Bulletin No. 219 (January 28, 1918), 2.

to the Quartermaster Corps as regards appropriations and personnel, was attached to the Operations Division of the Office of the Chief of Staff under date of February 12, 1918. The name of this division was changed to the Construction Division by order of the Secretary of War dated March 13, 1918. The Tank Service, first organized as a branch of the Engineer Department on February 18, 1918, was placed under the immediate direction of the Secretary of War on March 6, 1918, as a separate agency of the War Department, and designated as the Tank Corps.<sup>73</sup>

*Reorganization of General Staff.* The organization of the General Staff in such a manner as to enable it to perform its proper function as the coördinating agency of the various bureaus and offices in the War Department was contemplated in the issuance of General Order No. 14, February 9, 1918. This order provided for the organization of the General Staff into five main divisions, namely, Executive, War College, Purchase and Supply, Storage and Traffic, and Operations, each in charge of a Director, as assistant chief of staff. The Chief of Staff was charged with "the planning and development of the army program," and the order provided that the Chief of the Purchase and Supply Division should "have cognizance and supervision of the purchases and production of all munitions and other supplies," and should be charged with "the supervision and direction of all purchases, procurement and production activities of the several bureaus, corps, and other agencies of the War Department." By General Order No. 36, April 16, 1918, the Divisions of Purchase and Supply and of Storage and Traffic were consolidated into a Division of Purchase, Storage and Traffic.<sup>74</sup>

*Office of Chief of Field Artillery; Second and Third Assistant Secretaries.* A separate office of the Chief of Field Artillery was created by War Department order of February 10, 1918. Prior to that date, the administration of this branch of the service had been performed by the General Staff, under the immediate supervision of the senior Field Artillery officer on the General Staff.<sup>75</sup>

<sup>73</sup> War Department, Annual reports, 1918, 1393; 1919, 420.

<sup>74</sup> *Ibid.*, 1919, I, 249, 347. For a full account of the organization of these divisions under the order of February 9, and subsequent orders, see *Ibid.*, 255-443. See, also, Official Bulletin No. 231 (February 11, 1918), 6; No. 233 (February 13, 1918), 3.

<sup>75</sup> War Department, Annual report, 1919, I, Pt. 4, 5066-67.

By act of April 6, 1918, the appointment by the President, with the consent of the Senate, of a Second and a Third Assistant Secretary of War was authorized. Under this act the respective functions of the three assistant secretaries were defined. The Assistant Secretary was given general charge of War Department administration; the Second Assistant Secretary was directed to supervise the purchase of supplies for all bureaus; and the Third Assistant Secretary was assigned to matters affecting the non-military life of the army. This division of duties was altered by the appointment on August 28 of a Director of Aircraft Production as Second Assistant Secretary of War, with supervision over all aviation matters. The Assistant Secretary was given supervision over all munitions supplies.<sup>76</sup>

*Overman Act, 1918.* It was not until the passage of the Overman Act, which was approved by the President on May 20, 1918, that an adequate and efficient reorganization could be entirely carried out. As the exercise of the President's power, under authority of this act, affected the organization of the War Department to a greater extent than that of any other department, it may be well to note briefly at this point the events leading up to the passage of that act. Widespread charges of inefficiency in the conduct of the war had culminated in an exhaustive congressional investigation, which was begun on December 12, 1917, by the Senate Committee on Military Affairs. This investigation served to emphasize above all else the need for coöperation and coördination in the work of the executive departments and the newly created war agencies. While much had been accomplished through the various committees and boards established by the Council of National Defense, the elaborate organization thus effected had not furnished the most efficient machinery. On the contrary, the very number of these new agencies had served to complicate the problem of adjustment, not only among themselves, but also between them and the permanent administrative services.

Several bills were introduced in Congress with a view to securing the coördination which both legislators and administrators declared to be essential to the efficient conduct of the war. The

<sup>76</sup> 40 Stat. L., 515; Fairlie, *op. cit.*, 703, 705; War Department, Annual reports, 1918, I, 43.

first of these bills proposed to create a ministry of munitions, charged with the responsibility of supplying the requirements of the Army, Navy, Emergency Fleet Corporation, and our Allies.<sup>77</sup> Another, known as the Chamberlain Bill, provided for the creation of a war cabinet, composed "of three distinguished citizens of demonstrated executive ability." Both of these measures were consistently opposed by the War Department, which held that existing machinery should not be disrupted by such radical and comprehensive reconstruction, but that measures should be taken, and were being taken, for improving the coördination and efficiency of the various boards and departments.<sup>78</sup>

A third bill was introduced by Senator Overman, with the approval of the administration, which empowered the President "to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office or officer, in such manner as in his judgment shall seem best fitted to carry out the purpose of this act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, . . . . *Provided*, That this act shall remain in force during the continuance of the present war and for one year after the termination of the war. . . ." After a prolonged debate in Congress over the respective merits of the Chamberlain Bill and the measure supported by the administration, the latter was passed by Congress and approved May 20, 1918.<sup>79</sup>

*Department of Military Aeronautics; Bureau of Aircraft Production; Chemical Warfare Service; Motor Transport Corps.* Soon after the passage of the Overman Act, and under its authority, some important changes were effected in the organization of the War Department. An Executive order of May 20, 1918,

<sup>77</sup> 65 Cong. 2 sess. (1917-18), Congressional Record, Vol. 56, Pt. 1, 558, 617. A bill to create a Department of Supplies was also introduced in the House of Representatives on January 4, 1918.—*Ibid.*, 617.

<sup>78</sup> *Ibid.*, Pt. 2, 1077-78.

<sup>79</sup> 65 Cong. 2 sess. (1917-18), Congressional Record, Vol. 56, Pt. 2, 1747. For text of bill as introduced, see *ibid.*, Pt. 4, 3815. For a list of acts regarded as precedents for the grant of this coördinating power to the President, see *ibid.*, Pt. 5, 4521 *et seq.* Cf. Leake, *The conflict over coördination*, *American Political Science Review*, XII, 365 *et seq.* (August, 1918); 40 Stat. L., 556. The act, as it was passed by Congress, limited its duration to six months instead of one year after the termination of the war.

created the Department of Military Aeronautics and the Bureau of Aircraft Production, thereby relieving the Signal Corps of all its aviation duties except the designing and procuring of radio apparatus required in the Air Service.<sup>80</sup> Under authority of General Order No. 62, June 28, 1918, the various sections of the Medical Department, the Corps of Engineers, the Ordnance Department, and the Bureau of Mines in the Department of Interior, which were engaged in the development and procurement of material and the handling of the personnel pertaining to gas warfare, were consolidated into a new service, designated as the Chemical Warfare Service.<sup>81</sup> A similar consolidation of all motor transportation activities was effected on August 15, 1918, by the establishment of a Motor Transport Corps.<sup>82</sup>

*Further Reorganization of General Staff.* Another general reorganization of the General Staff Corps was authorized by General Order No. 80, August 26, 1918. This order provided for an executive assistant to the Chief of Staff, in place of the Executive Division, and created the Military Intelligence Division as a separate and coördinate division of the General Staff. The powers and duties of the Chief of Staff were specifically prescribed as follows: "The Chief of Staff is the immediate adviser of the Secretary of War on all matters relating to the Military Establishment, and is charged by the Secretary of War with the planning, development, and execution of the army program. The Chief of Staff by law (act of May 12, 1917) takes rank and precedence over all officers of the army; and by virtue of that position and by authority of and in the name of the Secretary of War he issues such orders as will insure that the policies of the War Department are harmoniously executed by the several corps, bureaus, and other agencies of the Military Establishment and that the army program is carried out speedily and efficiently." This order also changed the title of the War College Division to the War Plans Division.<sup>83</sup>

<sup>80</sup> War Department, Annual reports, 1918, I, 1381-84, 1407.

<sup>81</sup> *Ibid.*, 1918, I, 1399-1402.

<sup>82</sup> *Ibid.*, 1919, I, 289. A partial consolidation had previously been arranged by the creation of a Motor Transport Service in the office of the Quartermaster General on April 18, 1918.

<sup>83</sup> War Department, Annual reports, 1919, I, 250-51, 293. The act of May 12, 1917, referred to in this order amends Section 5 of the National Defense Act of 1916 with respect to the position of the Chief of Staff.—  
40 Stat. L., 40, 46.

In accordance with a plan to provide for a central purchasing agency, the office of the Quartermaster General was consolidated with the office of the Director of Purchase and Storage on October 21, 1918, under the general supervision of the Director of the Purchase, Storage, and Traffic Division of the General Staff.<sup>84</sup>

*Distinctive Features of Military Administration during the World War.* The foregoing description of the more important changes in the organization of the War Department prior to the conclusion of the Armistice on November 11, 1918, illustrates the evolution and development of administrative organization within that department, which was a necessary outgrowth of rapidly changing conditions, and which was put into effect during the stress of war. "It was based primarily," according to General March, "upon a consolidation of functions in the bureaus and services best adapted to handle them, and upon the direct and effective control of these agencies by the General Staff in such a manner as to direct their various activities to the accomplishment of the common end—the execution of the military program."<sup>85</sup>

Two distinctive features of military administration, as conducted during the war, merit special attention. The first was due, in large measure, to the physical separation of the War Department and the American Expeditionary Forces in Europe. It would have been impossible, even had it been attempted, for the War Department, including the Secretary, the Chief of Staff, and the members of the General Staff, to direct the administration, operations, training and supply of the army in the field, as was actually undertaken during the Civil War. Because of this fact, the War Department organization in the United States occupied itself with the organization and mobilization of personnel and supplies, while the conduct of military operations, and the administration, training, and supply of the army in the field was intrusted to the direction of General Pershing, as commander of the American Expeditionary Forces. The General Staff organized by General Pershing at his headquarters included five sections, namely, Administration, Intelligence, Operations, Supply, and Training, each under an Assistant Chief of Staff.<sup>86</sup>

<sup>84</sup> War Department, Annual reports, 1919, I, 425.

<sup>85</sup> *Ibid.*, 252.

<sup>86</sup> *Ibid.*, 557-58.

A second distinctive feature of military administration during the war was the changed character of the work performed by the War Department General Staff. In spite of the express provision in the National Defense Act of 1916 forbidding members of the General Staff to engage in administrative work pertaining to any of the bureaus or offices of the department, the General Staff became, during the war and under authority of the Overman Act, an active administrative agency, and not merely a body exercising supervisory authority over the work of the department. This was especially true of the Purchase, Storage, and Traffic Division, which was actually consolidated with the Quartermaster Corps into one administrative agency, thereby bringing together the greater part of the procurement and storage functions of the entire supply system.

**Post-War Agencies.** Following the cessation of hostilities in November, 1918, a number of agencies were created to direct the sale of surplus supplies and the settlement of claims against the War Department. General Order No. 103, November 6, 1918, provided for a Board of Contract Adjustment to hear and determine claims, doubts, and disputes arising under any contract of the War Department and to determine questions arising out of their performance or non-performance. This board was organized on November 12, 1918. On January 20, 1919, under authority of War Department Circular No. 26, a War Department Claims Board was appointed "to supervise and coördinate the work of the various War Department agencies engaged in the settlement of claims resulting from the termination of contracts or other procurement obligations of the department consequent upon the suspension of hostilities and to authorize and approve such settlements." This board, by General Order No. 33, March 3, 1919, was made the agency of the Secretary of War to carry out the purposes of the so-called "Dent Act," approved March 2, 1919, which conferred full authority upon the Secretary of War to adjust all contracts, both valid and invalid, connected with the prosecution of the war.<sup>87</sup>

The Secretary of War appointed a special representative on January 22, 1919, with authority to liquidate, under his direction,

<sup>87</sup> *Ibid.*, 97, 428-30.

the relations of the War Department to the several governments of the European Allies growing out of orders, purchases, and engagements arising in the procurement of munitions, services, and supplies in this country by such European Allies. Upon the recommendation of General Pershing, in command of the American Expeditionary Forces, the Secretary of War appointed in February, 1919, a United States Liquidation Commission composed of three civilians and the general purchasing agent of the American Expeditionary Forces in France. This commission, in addition to its duty of making settlements with the governments of our Allies arising out of contracts and arrangements made abroad, was also charged with the sale of stores and supplies in Europe which could not, with advantage, be returned to the United States.<sup>88</sup>

**Office of Director of the Air Service; Transportation Service; Real Estate Service; Finance Service.** The signing of the Armistice gave both time and opportunity for a clearer definition of the functions and organization of existing agencies in the War Department than had been practicable during the active continuation of the war. The marked increase of efficiency resulting from the organization of the Bureau of Aircraft Production and the Department of Military Aeronautics in May, 1918, was still further increased by the consolidation of these two services on March 19, 1919, into the Air Service, under a Director of the Air Service.<sup>89</sup> By Supply Circular No. 21, March 11, 1919, the Embarkation Service and the Inland Traffic Service were combined to form the Transportation Service, under the general supervision of the Director of Purchase, Storage, and Traffic. This service was more adequately organized by General Order No. 54, April 21, 1919.<sup>90</sup> On April 1, 1919, under authority of General Order No. 43 issued on that date, the Facilities Department of the Purchase, Storage, and Traffic Division became the Real Estate Service of the War Department, under the direction and supervision of the Director

<sup>88</sup> *Ibid.*, 46-48, 102, 635. A Sales Branch in the Purchase, Storage, and Traffic Division of the General Staff, under the direction of a Director of Sales, was established on December 17, 1918, to dispose of surplus property acquired during the war emergency, under authority of an act of July 9, 1918.—*Ibid.*, 432; 40 Stat. L., 845, 850.

<sup>89</sup> *Ibid.*, 1920, I, 1453.

<sup>90</sup> *Ibid.*, 1919, I, Pt. 4, 4897.

of Purchase, Storage, and Traffic. Supply Circular No. 30, April 9, 1919, provided for the establishment of a Finance Service, under a Director of Finance, with responsibility for and authority over all disbursements, fiscal accounting, preparation of estimates, and reports of accounts, subject to the supervision of the Director of Purchase, Storage, and Traffic.<sup>91</sup>

**Division of Inland Waterways.** No further changes of importance were effected in the organization of the War Department until June, 1920, pending the enactment of permanent legislation by Congress with respect to the War Department. The act of July 11, 1919, making appropriations for the support of the army, directed that the Chemical Warfare Service, the Air Service, the Construction Division, the Tank Corps, and the Motor Transport Corps, with their powers and duties as defined in orders and regulations in force and effect on November 11, 1918, should be continued until June 30, 1920. On March 1, 1920, in accordance with the provisions of the Transportation Act, approved February 28, 1920, the Division of Inland Waterways, first organized on September 5, 1918, as a branch of the United States Railroad Administration, was transferred to the jurisdiction of the Secretary of War, who assigned an army officer as chief of the service.<sup>92</sup>

**Departmental Reorganization, 1920.** A general reorganization of the War Department followed the passage of the act of June 4, 1920, amending the National Defense Act of 1916. The General Staff was to consist of four divisions, namely, War Plans, Operations, Military Intelligence, and Supply, each in charge of an Assistant Chief of Staff selected by the President from the general officers of the line. This act abolished the offices of Second and Third Assistant Secretary of War, and expressly charged the Assistant Secretary, in addition to such other duties as might be assigned him by the Secretary of War, with supervision of the procurement of all military supplies and the assurance of adequate provision for the mobilization of material and industrial organizations essential to war-time needs. A War Council composed of the Secretary of War, the Assistant Secretary of War, the Gen-

<sup>91</sup> *Ibid.*, Pt. I, 433, 434.

<sup>92</sup> 41 Stat. L., 104, 129; 456, 458; Secretary of War, Annual report, 1921, 201.

eral of the Army, and the Chief of Staff was created to consider policies affecting both the military and munitions problems of the War Department.<sup>93</sup>

In accordance with the provisions of this act with respect to the duties of the Quartermaster General, the Transportation Service, the Motor Transport Corps, the Construction Division, and the Real Estate Service, previously operated as independent branches of the army, were transferred to the Quartermaster Corps by General Order No. 42, July 14, 1920. The same order abolished the designation of Purchase and Storage Service, previously applied to the Quartermaster Corps, and also abolished the title of Director of Purchase and Storage, previously assigned to the Quartermaster General.<sup>94</sup>

The act of 1920 further provided supervising heads for the various branches of the mobile army, namely, infantry, cavalry, and field artillery, and the office of Chief of Chaplains was also created. The Air Service and the Chemical Warfare Service were permanently organized, and a Finance Department established, in charge of a Chief of Finance. The Adjutant General was placed at the head of a Personnel Bureau, charged with the operating functions of procurement, assignment, promotion, transfer, retirement, and discharge of all officers and enlisted men of the army, subject to regulations prescribed by the Secretary of War. The Tank Corps, as a separate branch of the military establishment was abolished, all tank units being assigned to the Infantry Branch.<sup>95</sup> The effect of this act was to restore the War Department to the system of administrative bureaus in charge of officers directly responsible to the Secretary of War but under the general supervision of the General Staff.

The organization of the War Department, as effected by and under the authority of the act of June 4, 1920, illustrates, in a remarkable manner, the progress made in the development of military administration from the establishment of that department

<sup>93</sup> 41 Stat. L., 759, 764-65; Secretary of War, Annual report, 1921, 10. On March 15, 1921, the office of Director of Sales, previously a branch of the Purchase, Storage, and Traffic Division of the General Staff, and the War Department Claims Board were transferred to the office of the Assistant Secretary of War.—*Ibid.*, 120, 123.

<sup>94</sup> *Ibid.*, 1921, 131 *et seq.*

<sup>95</sup> 41 Stat. L., 759, 765-70.

in 1789 until the present time. Its provisions with respect to the Chief of Staff as the military adviser of the Secretary of War and as the agent of that officer in carrying into effect military plans and policies; the powers and duties conferred by it upon the General Staff, with respect to the preparation of plans for the national defense and the rendering of professional aid and assistance to the Secretary of War and the Chief of Staff; the centralization of the procurement of all military supplies under the direction of the Assistant Secretary of War; the establishment of a permanent War Council within the War Department; the provision for an administrative and supervisory head for all the major branches of the army in the department; and the creation of a Finance Department, charged with the disbursement of all funds for the department—all are the culmination of repeated recommendations made by military and civil officers of the War Department, some of which date back to the War of 1812, and the experience gained, oftentimes at great cost, during the important military operations in which the army of the United States has been engaged.

**General Staff Reorganization, 1922.** While most of the serious defects in the system of military administration have thus been removed, the rapid development of modern warfare has introduced new problems requiring detailed study and changes in administrative organization. The mobilization of supply, the problems of technical development, production, and training, the maintenance of close coöperation between the elements of national defense and the industries of the nation, rapid advances in motor traction and aviation, and the production of explosives and chemicals, will necessitate frequent rearrangements in the administrative organization of the War Department. A reorganization of the General Staff was proposed by the present officers in charge of the War Department, notice of which was given by the Secretary of War in his annual report for 1921. "Under the projected reorganization," according to Secretary Weeks, "one part of the staff would be charged with the formulation of plans for the conduct of operations in the theatre of war, and in the event of war would be detached to become the General Staff for the forces in the field. The remaining sections would normally handle internal operations, training, supplies, personnel, and the routine of the War Depart-

ment. In an emergency these sections would logically remain active as the War Department General Staff, to handle the necessary mobilization of the man-power, the industries, and the interior resources of the country. This logical distribution of functions would not only enable the staff to perform its emergency duties in an orderly, progressive manner, but would also provide for the peace-time development of plans for operations that are so essential to our national defense."<sup>96</sup> This proposed reorganization of the General Staff was effected during the fiscal year ending June 30, 1922. As now constituted, the General Staff consists of five divisions, performing duties as follows: Personnel Division, those duties of the War Department General Staff which relate to the personnel, as individuals; Military Intelligence Division, those duties which relate to the collection, evaluation, and dissemination of military information; Operations and Training Division, those duties relating to the organization, training, and operations of the military forces which are not expressly assigned to the War Plans Division; Supply Division, those duties relating to supervision of supply; War Plans Division, those duties relating to the formulation of plans for use in the theatre of war of the military forces, separately or in conjunction with the naval forces, in the national defense.<sup>97</sup>

**War Claims Board Abolished.** One other recent change in the organization of the War Department deserves mention. The business of the Claims Board became so reduced in amount that a separate organization was considered no longer necessary. The board was abolished by General Order No. 9, February 28, 1922, which retained the Foreign Claims Section as a separate organization, but provided that it should function under the immediate jurisdiction of the Assistant Secretary.<sup>98</sup>

<sup>96</sup> Secretary of War, Annual report, 1921, 23.

<sup>97</sup> *Ibid.*, 1922, 112-13.

<sup>98</sup> *Ibid.*, 104-05.

## CHAPTER XIII.

### THE DEPARTMENT OF THE TREASURY

The development of administrative organization within the Treasury Department during the period from 1860 to the present time is marked by: (1) The establishment of a large number of new bureaus and divisions for the administration of duties imposed upon the department by acts of Congress, and the expansion of existing services; (2) the transfer of several bureaus concerned with duties relating to commerce and navigation from the Treasury Department to the Department of Commerce and Labor, upon the establishment of the latter department in 1903; and (3) the reorganization of the accounting and auditing system in the department, first by the passage of the Dockery Act in 1894, and more recently, by the passage of the Budget and Accounting Act of 1921. Some of the more important bureaus and offices in the Treasury Department were created during the Civil War period.

**Commissioner of Internal Revenue; Bureau of Engraving and Printing.** The act of July 1, 1862, "to provide internal revenue to support the government, and to pay interest on the public debt," created in the Treasury Department the office of the Commissioner of Internal Revenue, charged with superintending the assessment and collection of internal duties, stamp duties, licenses, or taxes imposed by this or subsequent acts. A Commissioner was placed at the head of this office, to be appointed by the President, with the consent of the Senate, and to direct its work, under the supervision of the Secretary of the Treasury.<sup>1</sup> The great number of paper notes issued during the Civil War made it advisable to abandon the system of private contracts for engraving and printing for the Treasury Department, and Congress, accordingly, authorized the Secretary of the Treasury, by act of July 11, 1862, to cause notes

<sup>1</sup> 12 Stat. L., 432. The history, present organization, and activities of the Bureau of Internal Revenue are described in Institute for Government Research, *The Bureau of Internal Revenue* (1923).

to be engraved, printed, and executed at the Treasury Department, to purchase the necessary machinery and materials, and to employ persons to do the work. A bureau was organized in the Treasury Department in 1863 to have charge of this work, which was designated as the National Currency Bureau. The title was later changed to the Bureau of Engraving and Printing. The first statutory recognition of this bureau was accorded by Congress in the act of June 20, 1874, which made appropriation for the salary of the chief of the bureau.<sup>2</sup>

**Comptroller of the Currency; Assistant Secretary; Supervising Architect.** The act of February 25, 1863, established a bureau in the Treasury Department, charged with the execution of all laws passed by Congress respecting the issue and regulation of a national currency secured by United States bonds. The chief officer of this bureau who was to be appointed by the President, upon nomination by the Secretary of the Treasury, and with the consent of the Senate, was denominated the Comptroller of the Currency, and was to hold office for a term of five years, unless sooner removed by the President, by and with the advice and consent of the Senate. The appointment of a deputy comptroller by the Secretary of the Treasury was also authorized, to perform the duties of the Comptroller during his absence or inability, or during a vacancy in his office.<sup>3</sup> A deficiency appropriation act of March 14, 1864, authorized the appointment by the President, with the consent of the Senate, of an additional Assistant Secretary of the Treasury. This act also authorized the appointment of a Superintending Architect in the construction branch of the Treasury, "to be employed and continued only during the rebellion and for one year after its close." The act of March 2, 1865, made appropriation for a Supervising Architect, which was continued by subsequent annual appropriation acts, and the Office of Supervising Architect was permanently authorized by the Revised Statutes.<sup>4</sup>

<sup>2</sup> 12 Stat. L., 532; 18 Stat. L., 85, 110. Cf. Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 1079; 38 Cong. 2 sess. (1864-65), H. ex. doc. 50, 2 *et seq.*

<sup>3</sup> 12 Stat. L., 665.

<sup>4</sup> 12 Stat. L., 22, 26-27; 13 Stat. L., 445, 449; Revised Statutes, 38. The detail of a practical engineer from the War Department in 1853 to take charge of the work of the erection of customs-houses and other public buildings, under the direction of the Secretary of the Treasury, resulted

**Special Commissioner of the Revenue; Bureau of Statistics.** A Revenue Commission was organized by the Secretary of the Treasury in June, 1865, in accordance with an act of March 3, 1865, which authorized that officer to appoint a commission of three persons to inquire and report upon the best mode of raising revenue for the support of the government. The existence of this commission was terminated by act of July 13, 1866, which authorized the appointment, by the Secretary of the Treasury, of a Special Commissioner of the Revenue, to perform the duties of the commission; such office to terminate in four years from June 30, 1866.<sup>5</sup> A Bureau of Statistics was established in the Treasury Department by act of July 28, 1866, in charge of a Director appointed by the Secretary of the Treasury. The office of Director was abolished by act of July 20, 1868, and the bureau placed under the superintendence of the Special Commissioner of the Revenue. This act authorized the appointment of a division clerk, by the Secretary of the Treasury, in the office of the Commissioner of Internal Revenue in respect to the Bureau of Statistics. As noted above, the office of Special Commissioner of the Revenue terminated on June 30, 1870. The Deputy Special Commissioner continued to act as chief of the bureau, and appropriation was made in the act of March 3, 1871, and subsequent acts, for the salary of "the officer in charge of the Bureau of Statistics."<sup>6</sup>

**Supervising Surgeon General, Marine Hospital Service; Solicitor Transferred to the Department of Justice.** The decade from 1870 to 1880 witnessed the creation of a number of important and permanent bureaus in the Treasury Department, as well as the establishment by law of a number of administrative divisions in the office of the Secretary of the Treasury. The first bureau

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in the creation of a Department of Construction in the Treasury Department. The office of Construction of Buildings was called the Construction Bureau after 1861. Annual reports were submitted by the engineer in charge to the Secretary of the Treasury. Cf. Checklist, 1190; Van Tyne and Leland, Guide to the archives of the government of the U. S. in Washington, 99 (1907); Institute for Government Research, The Office of the Supervising Architect (1923).

<sup>5</sup> 13 Stat. L., 469, 487; 14 Stat. L., 98, 170.

<sup>6</sup> 14 Stat. L., 328, 330; 15 Stat. L., 92, 99; 16 Stat. L., 475, 483. Cf. Parmelee, The statistical work of the federal government, *Yale Review*, XIX, 303-05 (November, 1910).

or office to be organized during this period was the office of the Supervising Surgeon General, Marine-Hospital Service. In a previous chapter of this monograph devoted to the organization of the Treasury Department, mention was made of the several acts passed by Congress authorizing the creation of a marine-hospital fund for the erection of marine-hospitals, under the direction of the President. An act of June 29, 1870, "to reorganize the Marine-Hospital Service," authorized the Secretary of the Treasury to appoint a Supervising Surgeon General to superintend, under his direction, the disbursement of the marine-hospital fund and all matters connected with the marine-hospital service.<sup>7</sup> The office of Solicitor of the Treasury was transferred to the Department of Justice by the act of June 22, 1870, creating that department.<sup>8</sup>

**Supervising Inspector General; Coast and Geodetic Survey.** A single administrative head for the Steamboat-Inspection Service, under the supervision of the Secretary of the Treasury, was provided by act of February 28, 1871, which authorized the President, with the consent of the Senate, to appoint a Supervising Inspector General, who should superintend the administration of the steamboat-inspection laws. He was also directed to preside over the annual meetings of the Board of Supervising Inspectors; this board being empowered to establish rules and regulations for the administration and enforcement of the steamboat-inspection laws, which, when approved by the Secretary of the Treasury, were accorded the full force of law.<sup>9</sup> By act approved March 3, 1871, the work of the Coast Survey was extended to include a primary triangulation across the continent to form a geodetic connection between the work on the Atlantic and Pacific Coast. The title of the service was not changed, however, until the subhead "Coast and Geodetic Survey" was used in the sundry civil appropriation act

<sup>7</sup> *Supra*, 157; 16 Stat. L., 169, 170. For an historical account of the Marine-Hospital Service, see 42 Cong. 3 sess. (1872-73), H. ex. doc. 131, 7-19; Institute for Government Research, *The Public Health Service* (1923).

<sup>8</sup> 16 Stat. L., 162.

<sup>9</sup> 16 Stat. L., 440, 458. An attempt had been made two years before the passage of this act to provide an administrative head for the Steamboat-Inspection Service in the Treasury Department by the creation of a Revenue-Marine and Steamboat-Inspection Division in the immediate office of the Secretary of the Treasury.—62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 313. Institute for Government Research, *The Steamboat-Inspection Service* (1922).

of June 20, 1878. Since that date, the service has been denominated the Coast and Geodetic Survey.<sup>10</sup>

**Bureau of the Mint.** An act of February 12, 1873, revising and amending the laws relative to the Mint of the United States, provided for the establishment of that agency as a bureau of the Treasury Department, embracing in its organization and under its control, all mints and assay-offices authorized by law. The act further provided that the chief officer of the bureau should be denominated the Director of the Mint, and should be under the general direction of the Secretary of the Treasury. The appointment of the Director was vested in the President, with the consent of the Senate, and the length of his term of office fixed at five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate.<sup>11</sup>

**Divisions Established in Secretary's Office.** The sundry civil appropriation act of March 3, 1875, made detailed provision for the administrative organization of the Treasury Department, including bureaus, offices, and divisions. Two important innovations in the organization of the department introduced by this act deserve mention. Ten divisions in the office of the Secretary of the Treasury were authorized, the titles of three of which were expressly designated, namely, Division of Warrants, Estimates, and Appropriations, Division of Loans, and Division of Currency. The remaining seven divisions organized in the department in accordance with this act included the following: Appointments, Customs, Public Moneys, Revenue-Marine, Stationery, Printing, and Blanks, Mails and Files, and Mercantile Marine and Internal Revenue. A second innovation was introduced by Section 3 of this act, which authorized the Secretary of the Treasury to appoint a Superintendent and a designated number of tellers, bookkeepers, clerks, and messengers in the offices of the Treasurer and the

<sup>10</sup> 16 Stat. L., 495, 508; 20 Stat. L., 206, 215. Cf. Institute for Government Research, *The Coast and Geodetic Survey* (1923).

<sup>11</sup> 17 Stat. L., 424. The creation of a Bureau of the Mint in the Treasury Department was urged by the Secretary of the Treasury in his annual report for 1871. The Secretary pointed out that, while all of the mints and assay-offices were nominally in charge of the Treasury Department, there was not, by law, any person in the department whose duty it was to be informed on matters relating thereto. Cf. 42 Cong. 2 sess. (1871-72), H. ex. doc. 2, xv.

Comptroller of the Currency, to be employed in carrying out the provisions of the act of June 20, 1874, "providing for a redistribution of the national-bank currency," and to be paid out of the funds deposited with the Treasury of the United States by national banking associations.<sup>12</sup>

**General Superintendent of the Life-Saving Service; National Board of Health.** The administration of the Life-Saving Service, which, since the erection of the first life-saving stations in 1848, had been performed by the Revenue-Marine Service of the Treasury Department, was placed in charge of a General Superintendent of the Life-Saving Service by act of June 18, 1878. This act provided for the appointment of a Superintendent by the President, with the consent of the Senate, and gave him general charge of the service, under the immediate direction of the Secretary of the Treasury.<sup>13</sup> A National Board of Health was established by act of March 3, 1879, consisting of seven citizens appointed by the President, with the consent of the Senate, one medical officer of the army, a medical officer of the navy, a medical officer of the Marine-Hospital Service, and one officer from the Department of Justice, to be detailed by the secretaries of the several departments and the Attorney General. This board was required to obtain information upon all matters affecting the public health, and to advise the several departments of the government, the executives of the several states, and the Commissioners of the District of Columbia, on all questions

<sup>12</sup> 18 Stat. L., 371, 396-99. Cf. 18 Stat. L., 123. A number of the divisions thus established by law had been previously organized by administrative order. Thus, the Division of Warrants, Estimates, and Appropriations was antedated by a Warrants Division, and a Customs Division had been created in the Secretary's Office in 1870. A Division of Special Agents, under a supervising special agent, had also been organized in the office of the Secretary about 1870. Under the act of 1875, one of the eight assistant chiefs of divisions was designated as "An Assistant Chief of Division of Special Agents." The title of Supervising Special Agent was given statutory recognition in the sundry civil appropriation act of March 3, 1891 (26 Stat. L., 948, 968). The Division of Loans and the Division of Currency were consolidated by act of August 15, 1876 (19 Stat. L., 143, 149). Cf. 53 Cong. 1 sess. (1893), H. rept. 49, 21-26. Checklist, 1021, 1025, 1075, 1124, 1150, 1163, 1165, 1199.

<sup>13</sup> 20 Stat. L., 163, 164. For a brief history of the Life-Saving Service, see Kimball, *The American life-saving service, Harper's Magazine*, LXIV, 357-73 (February, 1882); also, 44 Cong. 2 sess. (1876-77), H. ex. doc. 2, 840 *et seq.*

submitted by them. An act of June 2, 1879, prescribing in more detail the duties of the board, transferred to it certain work relating to quarantine which had formerly been required of the Marine-Hospital Service by the national quarantine act of April 29, 1878. The board was directed to make an annual report of its operations to the Secretary of the Treasury, and that officer was directed to disburse the moneys appropriated for the work of the board. The act of June 2 limited the duration of the National Board of Health to four years, but the work was carried on until 1885, when it came to an end for lack of appropriations.<sup>14</sup>

**Government Actuary; Cattle Commission; Secret Service Division.** In contrast to the decade just reviewed, the period from 1880 to 1890 was marked by only a few changes and innovations in the organization of the Treasury Department. Appropriation was made in the act of March 3, 1881, for a Government Actuary, under the control of the Treasury Department.<sup>15</sup> In accordance with a provision in the sundry civil appropriation act approved March 3, 1881, which authorized the Secretary of the Treasury to direct the inspection of cattle to be exported from the United States, a Treasury Cattle Commission was appointed by the Secretary of the Treasury which was continued until the establishment of the Bureau of Animal Industry in the Department of Agriculture by act of May 29, 1884, when the work of the commission was transferred to the new bureau.<sup>16</sup> Provision was made in the legislative, executive, and judicial appropriation act of August 5, 1882, for a Secret Service Division in the Treasury Department.<sup>17</sup>

**Bureau of Navigation; Divisions in Secretary's Office Receive Statutory Recognition.** Various duties exercised by the United States Circuit Courts and by different branches of the Treasury Department relating to the commercial marine and merchant seamen of the United States, were combined under the supervision of one bureau by the act of July 5, 1884, which established a Bureau of

<sup>14</sup> 20 Stat. L., 484; 21 Stat. L., 5; 20 Stat. L., 37. Cf. Checklist, 1147.

<sup>15</sup> 21 Stat. L., 385, 392.

<sup>16</sup> 21 Stat. L., 435, 442; 23 Stat. L., 31. Cf. Checklist, 1021.

<sup>17</sup> 22 Stat. L., 219, 230. A Secret Service Division had been established in the Treasury Department by administrative order as early as 1865. Cf. VanTyne and Leland, *op. cit.*, 99.

Navigation in the Treasury Department, in charge of a Commissioner of Navigation appointed by the President, with the consent of the Senate, who was to have, under the direction of the Secretary of the Treasury, "general superintendence of the commercial marine and merchant seamen of the United States, so far as vessels and seamen are not, under existing laws, subject to the supervision of any other officer of the Government."<sup>18</sup> The several divisions created in 1875 in the office of the Secretary of the Treasury were given statutory recognition by title in the legislative, executive, and judicial appropriation act of March 3, 1885. A Division of Captured Property, Claims, and Lands had been organized in 1883, which, together with the Division of Mercantile Marine and Internal Revenue, was abolished in 1888, and a new Miscellaneous Division was established to perform their duties.<sup>19</sup>

**Assistant Secretary; Superintendent of Immigration.** The Superintendent of the Coast and Geodetic Survey was made appointive by the President, with the consent of the Senate, instead of by the Secretary of the Treasury, by act of March 2, 1889.<sup>20</sup> An additional Assistant Secretary of the Treasury was authorized by act of July 11, 1890.<sup>21</sup> An act of March 3, 1891, "in amendment to the various acts relative to immigration and to the importation of aliens under contract or agreement to perform labor," authorized the President, with the consent of the Senate, to appoint a Superintendent of Immigration, who should be an officer in the Treasury Department, and subject to the control and supervision of the Secretary of the Treasury.<sup>22</sup>

**Proposed Transfer of Certain Bureaus to Navy Department.** A determined effort was made, extending over the decade from 1882 to 1892, to secure the transfer of certain bureaus in the Treasury Department to the Navy Department. This transfer was first proposed by Secretary of the Navy Chandler in his annual reports

<sup>18</sup> 23 Stat. L., 118. Cf. Organization and law of the department of commerce and labor, 154 (1904). For the history, present activities, and organization of this bureau, see Institute for Government Research, *The Bureau of Navigation* (1923).

<sup>19</sup> 23 Stat. L., 388, 396; 25 Stat. L., 256, 265. Cf. 53 Cong. 1 sess. (1893), H. rep. 49, 24.

<sup>20</sup> 25 Stat. L., 939, 949.

<sup>21</sup> 26 Stat. L., 228, 236.

<sup>22</sup> 26 Stat. L., 1084, 1085.

for 1882 to 1883, who vigorously contended that the work of the Lighthouse Board, the Coast Survey, the Revenue-Marine Service, and the Life-Saving Service was essentially naval in character, and could be best performed and administered under the jurisdiction of the Navy Department. He also advocated the establishment of a Bureau of Mercantile Marine in the Navy Department, which would include the Steamboat-Inspection Service and the Marine-Hospital Service, and all other bureaus or services charged with the supervision and regulation of matters relating to the merchant marine. The proposed transfer, however, met with determined opposition upon the part of the Secretary of the Treasury and the heads of the various services concerned.<sup>23</sup>

The proposal was again renewed by Secretary of the Navy Tracy in his annual report for 1889. Two bills transferring the Revenue-Marine Service from the Treasury Department to the Navy Department were introduced in the House on December 18, 1889. A substitute bill which was reported favorably from the Committee on Naval Affairs, passed the House on March 17, 1890, but failed to pass the Senate, although favorably reported by the Senate Naval Committee on April 2, 1890. A similar bill had been favorably reported by the Senate Committee on Naval Affairs on February 14, 1890. In this instance the transfer met the approval of the Secretary of the Treasury, Mr. Windom, and a large majority of the officers in the Revenue-Marine Service.<sup>24</sup> The subject was revived in 1892, by the introduction of a bill in the Senate providing for the transfer. The bill was again favorably reported by the Senate Committee on Naval Affairs, after a thorough investigation, but met the opposition of Secretary of the Treasury Foster, who had succeeded Secretary Windom as the head of that department, and the bill failed to receive the approval of Congress.<sup>25</sup>

<sup>23</sup> 47 Cong. 1 sess. (1882-83), H. ex. doc. 1, 27-40; 48 Cong. 1 sess. (1883-84), H. ex. doc. 1, 32-42; 51 Cong. 1 sess. (1889-90), S. ex. doc. 116.

<sup>24</sup> 51 Cong. 1 sess. (1889-90), H. ex. doc. 1, 46-50; Congressional Record, Vol. 21, Pt. 1, 227, 241; Pt. 2, 1371; Pt. 3, 2313-21, 2329, 2336, 2901; Pt. 2, 1309; H. rep. 76; S. rep. 345.

<sup>25</sup> 52 Cong. 1 sess. (1891-92), Congressional Record, Vol. 23, Pt. 1, 23; Pt. 3, 2754; Pt. 4, 3155, 3608; Pt. 5, 4475, 4595; Pt. 6, 5977; S. rep. 530. For a history of the efforts looking to the transfer of the Revenue-Marine Service from the Treasury Department to the Navy Department, see the Report of the President's Commission on Economy and Efficiency, 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 299 *et seq.*

The organization and administration of the Coast and Geodetic Survey in the Treasury Department, as one of four administrative services which performed duties essentially scientific in character, was the subject of an investigation conducted by a Joint Commission of Congress appointed in accordance with a provision in the sundry civil appropriation act of July 7, 1884. A Committee of the National Academy of Sciences, appointed at the instance of the joint commission, although favoring the transfer of all scientific work of the national government to some one of the several executive departments, was not prepared to recommend the immediate consolidation of the Coast Survey with the Hydrographic Office of the Navy Department, as had been proposed by the head of the latter department. The committee, did, however, suggest the possibility of such a consolidation upon the completion of the survey of the coast line; the operations of the Coast and Geodetic Survey to be confined, thereafter, to surveys of the interior. The final report of the joint commission declared as follows: "There is nothing in the testimony to indicate that the work performed by the Survey can be more efficiently performed if transfer is made, nor is it shown that the Navy can more economically execute the work, so there is no reason either on the score of efficiency or economy for making the change."<sup>28</sup>

**Reorganization of Accounting System.** Provision was made by Congress in the legislative, executive, and judicial appropriation act approved March 3, 1893, for the appointment of a joint commission consisting of three Senators and three Representatives to inquire into the status of the laws organizing the executive departments, bureaus, and divisions of the national government, the rules, regulations, and methods for the conduct of the same, and to report any modifications of existing laws which would tend to secure greater efficiency and economy. This commission, which became known as the Cockrell-Dockery Commission, with the aid of several experts conducted an extended investigation, and submitted a number of reports and recommendations to Congress with respect to the modification of existing laws. The most important matter accomplished by the commission concerned the methods

<sup>28</sup> 49 Cong. 1 sess. (1885-86), S. misc. doc. 82, 6-7; H. rep. 2740, 13; S. rep. 1285, 13.

of accounting in the Treasury Department. A bill was introduced in the House of Representatives by Mr. Dockery, chairman of the commission, which provided for a reorganization of the existing accounting system in the Treasury Department. The bill, which embodied the ideas of the commission, received the enthusiastic support of the Secretary of the Treasury and other officers in the Treasury Department. It was reported favorably to the House on March 29, 1894, but was re-committed to the joint commission which reported a substitute bill on May 1, 1894. The bill passed the House on the following day, but was indefinitely postponed in the Senate on July 30. The main provisions of the bill, however, were incorporated in the legislative, executive, and judicial appropriation bill, which passed both Houses of Congress and was approved by the President on July 31, 1894.<sup>27</sup>

The act of 1894 abolished the offices of Commissioner and Deputy Commissioner of Customs, Second and Deputy Second Comptroller, and Deputy First Comptroller, and changed the title of the First Comptroller to the Comptroller of the Treasury. An Assistant Comptroller, to be appointed by the President, with the consent of the Senate, was authorized, to perform such duties as might be prescribed by the Comptroller. The designations of the auditors of the Treasury Department were altered as follows: that of First Auditor, to Auditor for the Treasury Department; Second Auditor, to Auditor for the War Department; Third Auditor, to Auditor for the Interior Department; Fourth Auditor, to Auditor for the Navy Department; Fifth Auditor, to Auditor for the State and other departments; and Sixth Auditor, to Auditor for the Post Office Department. The duties of the various auditors were redistributed and enlarged, and their examinations, revisions and decisions with respect to financial accounts were made final subject only to formal appeal. Prior to the passage of this act, accounts had merely passed through an auditor's office on their way to a final examination in the office of one of the comptrollers.

<sup>27</sup> For the several reports of the commission, see 53 Cong. 1 sess. (1893), H. rep., Vol. 2; 53 Cong. 2 sess. (1893-94). Congressional Record, Vol. 26, Pt. 4, 3329-30; Pt. 5, 4297, 4354, Pt. 8, 7998; 28 Stat. L., 162, 205-211. A separate bill abolishing the office of Commissioner of Customs had been introduced in the House on February 12, 1894, and had passed on March 8, but it was never reported out of committee in the Senate.—53 Cong. 2 sess. Congressional Record, Vol. 26, Pt. 3, 2099, 2733, 2831.

or the Commissioner of Customs. In brief, the act of 1894 substituted the system of single auditing for that of double auditing. Above the six auditors was placed one Comptroller, with his assistant, to revise the few settlements appealed from the auditors, but mainly to determine finally the construction of statutes either by revision on the auditors' reports of decisions, or upon appeal. The Division of Warrants, Estimates, and Appropriations in the office of the Secretary of the Treasury was recognized and established by the act of 1894 as the Division of Bookkeeping and Warrants, and was charged, under the direction of the Secretary, with the keeping of all accounts of receipts and expenditures of public money except those relating to the postal service.<sup>28</sup>

The beneficial effect of this reorganization of the system of accounting was proclaimed the following year by the Secretary of the Treasury, the Comptroller, and the several auditors in letters addressed to the House Committee on Appropriations. It was the consensus of opinion that the operation of the new system had served to expedite the business of the government without the sacrifice of accuracy or the removal of safeguards for the protection of public interests.<sup>29</sup> The system thus inaugurated in 1894 remained substantially unaltered until the passage of the Budget and Accounting Act in 1921.

**Revenue Cutter Service; Bureau of Standards; Public Health and Marine Hospital Service.** Following the reorganization of 1894, no important changes in the arrangement of the Treasury Department were introduced until the beginning of the twentieth century. The title of the Revenue-Marine Division was changed to the Revenue-Cutter Service by the act of July 31, 1894, which authorized the Secretary of the Treasury to detail a captain of the Revenue-Cutter Service as chief of that division.<sup>30</sup> By act of March 3, 1901, the Office of Standard Weights and Measures, which had been under the direction of the Superintendent of the Coast and

<sup>28</sup> 28 Stat. L., 162, 205-11. For a brief summary of the changes introduced in the system of accounting by this act, see 53 Cong. 2 sess. (1893-94). H. rep. 637, 3-6. For a history of the accounting system, see *The accounting system of the United States from 1789 to 1910*, 7-21 (1911). For the origin and history of the office of Comptroller, see Hotchkiss, *The judicial work of the comptroller of the treasury*, Ch. I (1911).

<sup>29</sup> 53 Cong. 3 sess. (1894-95), H. rep. 2000, 19 *et seq.*

<sup>30</sup> 28 Stat. L., 162, 172.

Geodetic Survey since its establishment in 1831, was given the status of a separate bureau in the Treasury Department, with the title of National Bureau of Standards. The appointment of a Director by the President, with the consent of the Senate, was authorized, who should have general supervision of the bureau, its equipment, and the exercise of its functions. The Secretary of the Treasury was directed to appoint a visiting committee of five members, to consist of men prominent in the various interests involved, and not in the employ of the government, who should visit the bureau at least once each year and report to him upon the efficiency of its scientific work and the condition of its equipment.<sup>31</sup> The title of the Marine-Hospital Service was changed to the Public Health and Marine-Hospital Service by act of July 1, 1902, and the title of the Division of Stationery, Printing, and Blanks to the Printing and Stationery Division in 1903.<sup>32</sup>

**Transfer of Certain Bureaus to the Department of Commerce and Labor.** The creation of the Department of Commerce and Labor in 1903 resulted in the transfer to that department of several important bureaus and offices from the Treasury Department. In fact, one of the most effective arguments proposed with respect to the creation of another executive department was the great variety of diversified duties and subjects coming under the jurisdiction of the Treasury Department. Many of these branches of the public service, which were, in large measure, foreign to the subject of finance and revenue, as was pointed out in the report of the Senate Committee on Commerce, pertained more directly to the subject of commerce, manufactures, and other industries,<sup>33</sup> The following bureaus, offices, and divisions of the Treasury Department were transferred in 1903 to the Department of Commerce and Labor: The Lighthouse Board and the Lighthouse Establishment, the Steamboat-Inspection Service, the Bureau of Navigation, the National Bureau of Standards, the Coast and Geodetic Survey, the Bureau of Immigration, and the Bureau of Statistics.<sup>34</sup>

<sup>31</sup> 31 Stat. L., 1449. *Supra*, 153-54. For the history of this bureau, see The organization and law of the department of commerce and labor, 413 *et seq.* (1904).

<sup>32</sup> 32 Stat. L., 712. Checklist, 1165.

<sup>33</sup> Organization and law of the department of commerce and labor, 425.

<sup>34</sup> 32 Stat. L., 825, 826.

The establishment of the Department of Commerce and Labor, therefore, aided materially in relieving the Treasury Department of duties unrelated to the administration of fiscal or currency affairs.

**Miscellaneous Division Abolished; General Supply Committee.** The Miscellaneous Division in the Secretary's office was abolished by act of June 22, 1906, which authorized the Secretary of the Treasury to assign the clerical force of that division to other offices in the Treasury Department.<sup>35</sup> In order to carry out more effectively the provisions of the act of January 24, 1894, relative to contracts for supplies in the several departments and bureaus of the national government, a General Supply Committee was created by an Executive order dated May 13, 1909, composed of one representative from each of the nine executive departments, the Government Printing Office, the Interstate Commerce Commission, the Smithsonian Institution, the Superintendent of the State, War, and Navy Building, and the Government of the District of Columbia. The latter was excluded by an Executive order issued on June 16, 1909.<sup>36</sup> The General Supply Committee was made a statutory body under the direction of the Secretary of the Treasury by act of June 17, 1910, which directed the Secretary of the Treasury to advertise and contract for miscellaneous supplies for all of the executive departments and other government establishments in Washington. It was made the duty of the General Supply Committee to prepare an annual schedule of required miscellaneous supplies, to standardize such supplies, and to aid the Secretary of the Treasury in soliciting bids and in securing the proper fulfillment of contracts. The act also provided for a Superintendent of Supplies and two clerks to be employed under the direction of the committee.<sup>37</sup>

<sup>35</sup> 34 Stat. L., 389, 404.

<sup>36</sup> Checklist, 425. The act of January 24, 1894, provided for the submission of contracts for supplies to a board composed of one of the Assistant Secretaries of the Treasury and Interior departments, and one of the Assistant Postmasters General, who should be designated by the heads of the said departments and the Postmaster General, respectively. This board, of which the representative of the Treasury Department was Chairman, came to be known as the Board of Awards, and was required to examine and compare all bids submitted for the furnishing of supplies and to recommend the acceptance or rejection thereof.—28 Stat. L., 33, 34.

<sup>37</sup> 36 Stat. L., 468, 486, 531. This act repealed the provision in the act of January 24, 1894, creating a Board of Awards composed of representatives from the Treasury, Interior, and Post Office departments.

**Recommendations of Commission on Economy and Efficiency.** The President's Commission on Economy and Efficiency, appointed by President Taft on March 8, 1911, under authority of the acts of June 25, 1910, and March 3, 1911, granting appropriations to the President to enable him to inquire into the methods of transacting the public business of the various executive departments and other governmental establishments, in its report on problems of organization, made several recommendations with respect to bureaus and offices in the Treasury Department. The commission proposed the transfer of the Life-Saving Service from the Department of the Treasury to the Department of Commerce and Labor, and the placing of this service and the Lighthouse Service under one bureau. The abolition of the Revenue-Cutter Service as a separate service was proposed, the duties thereof to be taken over by other services in the several departments concerned. It should be noted that this proposal differed from previous efforts affecting the status of the Revenue-Cutter Service, which sought to transfer the entire service to another executive department. The commission further proposed a virtual return to the organization of the accounting and auditing system at first established in the Treasury Department in 1789, by the abolition of the offices of the six auditors of the Treasury, and the creation of the office of "Auditor of the Treasury," to which should be transferred the authority, powers, and duties at that time conferred upon the six auditors. Another proposal affecting the organization of the Treasury Department was that concerning the establishment of a Public Health Service, independent of any of the existing departments, which should include, among other services, the Bureau of Public Health and Marine-Hospital Service in the Treasury Department. The recommendations of the commission, although based upon extended investigations and supported by administrative experts, were not acted upon by Congress.<sup>88</sup>

**Public Health Service; Section of Surety Bonds; Bureau of War Risk Insurance; Coast Guard.** The title of the Public Health and Marine-Hospital Service was changed to the Public Health Service by act of August 14, 1912, providing for addi-

<sup>88</sup> 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 45, 283-84, 401; 62 Cong. 3 sess. (1912-13), H. ex. doc. 1252, 911.

tional officers in that service and the extension of its activities.<sup>39</sup> A Section of Surety Bonds in the office of the Secretary of the Treasury was created by act of July 16, 1914, which directed the transfer of a law and bond clerk from the Division of Appointments, to act as chief of the section, and three other clerks from the same division.<sup>40</sup> A Bureau of War Risk Insurance, in charge of a Director, was established in the Treasury Department by act of September 2, 1914, which was authorized to make provisions for the insurance of United States merchant vessels and their cargoes against loss or damage by the risks of war. The Secretary of the Treasury was empowered to establish an advisory board of three members to assist the bureau in fixing rates of premium and in the adjustment of claims for losses. The act provided for the suspension of the operations thereunder within two years from the date of its passage. The time for the suspension of the operations of the act was extended to three years by act of August 11, 1916, and to four years by act of March 3, 1917.<sup>41</sup> The Revenue-Cutter Service and the Life-Saving Service were consolidated into one organization, known as the Coast Guard, by act of January 28, 1915. The act provided that the Coast Guard should operate under the Treasury Department in time of peace, but as a part of the navy, subject to the orders of the Secretary of the Navy, in time of war or when the President should so direct.<sup>42</sup>

**Federal Farm Loan Bureau.** The Federal Farm Loan Act of July 17, 1916, established in the Treasury Department a Federal Farm Loan Bureau, charged with the administration of that act, under the general supervision of a Federal Farm Loan Board. This board was to consist of five members, including the Secretary of the Treasury, as *ex officio* chairman, and four persons appointed by the President, with the consent of the Senate, not more than two of whom should belong to the same political party. One member of the board was to be designated as Farm Loan Commissioner, to act as the executive officer of the board. The board was empowered to employ such legal and clerical assistance as it might deem necessary to conduct its business. The powers of the Farm Loan

<sup>39</sup> 37 Stat. L., 309.

<sup>40</sup> 38 Stat. L., 454, 468.

<sup>41</sup> 38 Stat. L., 911; 39 Stat. L., 514; 1131.

<sup>42</sup> 38 Stat. L., 800.

Board were extended by act of March 4, 1923, to include the supervision of Federal Intermediate Credit Banks provided for in that act, and the number of appointive members of the board was increased from four to six.<sup>43</sup>

**Treasury Department Activities during the World War.** Although the entrance of the United States into the World War imposed a great many additional duties upon the Treasury Department, the administrative organization of that department during the war period was chiefly characterized by the expansion of existing agencies, notably the Bureau of Internal Revenue, the Bureau of War Risk Insurance, and the Public Health Service.<sup>44</sup> A few special war agencies were created during the emergency period, but the more important changes in the organization of the department have been effected since the close of the war.

Two services in the department were actively engaged during the war as integral parts of the military forces, namely, the Public Health Service and the Coast Guard. An Executive order issued on April 3, 1917, under authority of the act of July 1, 1902, ordered that, in times of threatened or actual war, the Public Health Service should constitute a part of the military forces of the United States, and that the Secretary of the Treasury, upon request of the

<sup>43</sup> 39 Stat. L., 360; Public—No. 503—67 Cong. (March 4, 1923), 22. For a brief account of the initial organization of the Federal Farm Loan System, see the Secretary of the Treasury, Annual report on the state of the finances, 1917, 35-37.

<sup>44</sup> The Bureau of War Risk Insurance, at the outbreak of the war on April 6, 1917, employed twenty-three persons, and, under the act of October 6, 1917, was organized in two divisions. This service on June 30, 1918, comprised twelve divisions, and the maximum number of employees—17,336—was reached on March 6, 1919. The personnel of the Bureau of Internal Revenue rose from 604 at the outbreak of the war to 6301 on September 30, 1920. The Public Health Service, organized in seven divisions in 1917, and employing in Washington a force of forty-five employees, grew to embrace eleven divisions, employing 565 persons, in 1920. Other services in the department which required a tremendous expansion in personnel to perform their work were the Office of the Register of the Treasury and the Division of Loans and Currency. The force in the Register's Office increased from twenty-one in 1917 to 1140 on March 31, 1920, while the total personnel employed in the Division of Loans and Currency rose from eighty-four at the beginning of the war to 2930 on February 29, 1920. Cf. Treasury Department, Annual reports, 1917, 29, 43; 1918, 84; 1920, 250-51; Surgeon General of the Public Health Service, Annual report, 1917, 9; 1920, 9.

Secretary of War or the Secretary of the Navy, might detail officers or employees of that service for duty either with the army or navy. All stations of the Public Health Service were made available for the reception of sick and wounded officers and men, and for such other purposes as should promote the public interest in connection with military operations. In addition to the assistance given to the military branches of the government in accordance with this order, the Public Health Service was charged by an Executive order of July 1, 1918, with the administration of all civil public health activities carried on by any Federal executive department or agency especially created for or concerned in the prosecution of the war.<sup>45</sup> The entire personnel and office force of the Coast Guard were transferred by Executive order of April 7, 1917, to the Navy Department, under authority of the act of January 28, 1915, and the service continued to operate as a part of the navy until its return to the Treasury Department by Executive order, dated August 28, 1919.<sup>46</sup>

The activities of the War Risk Insurance Bureau were enlarged by act of June 12, 1917, to include the insurance of masters, officers, and crews of American merchant vessels against loss of life or personal injury by the risks of war, and for compensation during detention following capture by enemies of the United States. In addition to the advisory board created by the act of 1914, the Secretary was authorized to appoint two persons skilled in the practices of accident insurance to assist the bureau in adjustment of claims for death, personal injury, or detention. The activities of this bureau were still further extended by act of October 6, 1917, to include the insurance, upon application, of all persons in the service of the army or navy, payment of allotments and family allowances to dependents of enlisted men in the military or naval forces, and the payment of compensation to officers and enlisted men of the army and navy or their dependents in case of death or disability. Two divisions in the bureau were established by this act, namely, the Division of Marine and Seamen's Insurance, and the Division of Military and Naval Insurance, each in charge of

<sup>45</sup> Official Bulletin No. 1 (May 10, 1917), 6; Surgeon General, Annual report, 1918, 10.

<sup>46</sup> Official Bulletin No. 1, (May 10, 1917), 6; Treasury Department, Annual reports, 1920, 221.

a Commissioner, subject to the supervision of the Director. Provision was also made for the appointment of an advisory board by the Secretary of the Treasury to assist the Division of Military and Naval Insurance in fixing premium rates and in the adjustment of claims.<sup>47</sup>

To carry out the provision in Section 12 of the act of September 24, 1917, relating to the auditing of the accounts of the military establishment abroad, an Assistant Comptroller and an Assistant Auditor were appointed by the Secretary of the Treasury, a clerical force was organized, and offices were opened in Paris on December 29, 1917.<sup>48</sup> The War-Revenue Act of October 3, 1917, imposed a tremendous burden upon the Bureau of Internal Revenue, and necessitated a reorganization of that bureau, the creation of new divisions, and the immediate increase of its personnel.<sup>49</sup>

Two additional Assistant Secretaries of the Treasury, to be appointed by the President, with the consent of the Senate, were authorized by act of October 6, 1917, to continue until six months after the close of the war.<sup>50</sup> Following the appointment of a Third Assistant Secretary of the Treasury in 1890, the various administrative services of the department were divided into three groups, each under the general supervision of an Assistant Secretary. The Assistant Secretaries thereafter were designated as the Assistant Secretary in charge of fiscal bureaus, the Assistant Secretary in charge of customs, and the Assistant Secretary in charge of public buildings and miscellaneous.<sup>51</sup> One of the additional Assistant Secretaries authorized in 1917 was given general supervision over the Bureau of Internal Revenue and the Bureau of War Risk Insurance. No definite assignment of duties was made for the other additional Assistant Secretary until April, 1918, when he was given general supervision over the Foreign Loan Bureau and the War Loan Organization. These two bureaus were temporary war agencies created in the Treasury Department to perform addi-

<sup>47</sup> 40 Stat. L., 102; 398.

<sup>48</sup> 40 Stat. L., 288, 393. Cf. Secretary of the Treasury, Annual report on the state of the finances, 1918, 82.

<sup>49</sup> 40 Stat. L., 300. For a brief account of the organization of the bureau for the administration of this act, see Commissioner of Internal Revenue, Annual report, 1918, 4-5.

<sup>50</sup> 40 Stat. L., 345, 347.

<sup>51</sup> Congressional directory, 52 Cong. 1 sess. (1891-92), S. misc. doc. 1, 180.

tional duties imposed upon that department by the several acts of Congress authorizing the issue and sale of bonds and the extension of credit to foreign governments.<sup>52</sup>

**Coördination of Auditing and Accounting; Reorganization of Bureau of Internal Revenue.** To coördinate the work of the several auditing and accounting offices in the Treasury Department as far as possible under the existing law, the Secretary, by order of October 25, 1918, placed them under the administrative supervision and direction of the Comptroller of the Treasury. In exercising this power, the Comptroller was able to expedite the increased work of these offices and to simplify accounting methods.<sup>53</sup> The Revenue Act of 1918, approved February 24, 1919, necessitated a further reorganization of the Bureau of Internal Revenue. In addition to the existing Income Tax Unit, a Unit Directing the Administration of the Estate, Capital-Stock and Child-Labor Tax Laws, and a Sales Tax Unit were established to administer certain portions of that act. Express provision was made in the act for the creation of an Advisory Tax Board to be composed of not more than six members appointed by the Commissioner, with the approval of the Secretary of the Treasury. This board, which was to continue for two years after the passage of the act unless discontinued at an earlier date by the Commissioner, was dissolved on October 1, 1919, but a Committee on Appeals and Review, composed of three officers of the bureau, was established to consider appeals from taxpayers concerning the

<sup>52</sup> *Ibid.* (January, 1918), 289; (December, 1918), 291. Cf. Secretary of the Treasury, Annual report on the state of the finances, 1918, 63; Bogart, Economic organization for war, *American Political Science Review*, XIV, 603 (November, 1920). The Foreign Loan Bureau was charged with the supervision of loans to foreign governments under the acts of April 24, 1917, September 24, 1917, April 4, 1918, and July 9, 1918, which vested authority in the Secretary of the Treasury, with the approval of the President, to establish credits in favor of foreign governments engaged in war with the enemies of the United States and to the extent of the credits so established, to purchase from such governments their several obligations. The War Loan Organization, under the immediate control of a Director, was charged with the supervision of all activities directed toward the sale of Liberty bonds and war-saving certificates. Appropriations were voted in each of the several acts enumerated above for "expenses of loans," out of which the expenditures of these two bureaus were paid.—40 Stat. L., 35; 288; 502; 844.

<sup>53</sup> Treasury Department, Annual reports, 1920, 243.

payment of income and profit taxes and to advise the Income Tax Unit. A Prohibition Unit was organized on December 22, 1919, charged with the enforcement of the National Prohibition Act, approved October 28, 1919.<sup>54</sup>

**Coöperation Between Public Health Service and Bureau of War Risk Insurance; Savings Division Established.** To care for the beneficiaries of the Bureau of War Risk Insurance, the Public Health Service was designated by the Secretary of the Treasury as the principal instrumentality for the performance of the hospitalization work of that bureau. This arrangement was confirmed by the act of March 3, 1919, which provided additional hospital facilities under the direction of the Public Health Service for the care of patients of the Bureau of War Risk Insurance. This necessitated an immediate expansion of the Marine-Hospital Division of that service, which was organized in twelve sections. Close coöperation was effected between this division and the Medical Division of the Bureau of War Risk Insurance.<sup>55</sup> A Savings Division was established in 1919, in charge of a Director, to develop and protect the secondary market for all war issues of government securities, to sell government saving securities, and to encourage the habit of regular saving and investment in such securities.<sup>56</sup>

**Commissioner of the Public Debt; Commissioner of Accounts and Deposits.** Two new offices were created in the Treasury Department by administrative regulation to coördinate and supervise the work of the various fiscal bureaus and divisions. A Commissioner of the Public Debt was appointed in November, 1919, who was given administrative supervision, under the general direction of the Assistant Secretary in charge of fiscal affairs, of all transactions affecting the public debt. He was charged with the coördination and supervision of the Division of Loans and Currency and the office of the Register of the Treasury—the two

<sup>54</sup> 40 Stat. L., 1057, 1140-41; 41 Stat. L., 305, 306; Treasury Department, Annual reports, 1920, 1486-1504.

<sup>55</sup> 40 Stat. L., 1302; Treasury Department, Annual reports, 1920, 205 *et seq.*; Surgeon General, Annual report, 1919, 10; 1920, 13.

<sup>56</sup> Secretary of the Treasury, Annual report on the state of the finances, 1919, 62-63; Treasury Department, Annual reports, 1920, 139.

services immediately concerned in the issue, exchange, conversion, and redemption of Government securities, the payment of interest, and the large bookkeeping operations connected with these activities. The Division of Public Debt Accounts and Audit, created in January, 1920, was also placed under his supervision.<sup>57</sup>

The office of Commissioner of Accounts and Deposits was created in January, 1920, because of the large increase in the accounting transactions of the Treasury in connection with receipts and expenditures and the deposit of public funds throughout the country. The Commissioner, under the Fiscal Assistant Secretary, was given administrative supervision of Bookkeeping and Warrants and the Division of Public Moneys, and their relations to the Office of the Treasurer. The Division of Deposits, created on May 19, 1920, to supervise the deposit of public moneys, was also placed under his direction.<sup>58</sup>

These two officers, together with the Comptroller of the Treasury, who, as noted above, was given administrative control of the several auditors in 1918, were regarded as supervisory intermediaries between the Fiscal Assistant Secretary and the various fiscal bureaus and divisions. "The arrangement," said Secretary Houston in his annual report for 1920, "has not only relieved the fiscal Assistant Secretary of many details and left him free to devote more time to the larger problems of administration, but it has also accomplished a logical coördination of related activities and the elimination of duplicated work." In furtherance of the objects underlying this departmental reorganization, he proposed to Congress that the Office of Register of the Treasury be changed to a division in the Secretary's office, and the consolidation of the accounting offices into a single unit, under the direct administrative supervision of one central authority.<sup>59</sup>

**Independent Treasury System Abolished.** The legislative, executive, and judicial appropriation act of May 29, 1920, authorized the Secretary of the Treasury to discontinue the various sub-treasuries and the offices of the Assistant Treasurers first established in 1846, and to transfer the duties of the latter to the Treas-

<sup>57</sup> Treasury Department, Annual reports, 1920, 240-42.

<sup>58</sup> *Ibid.*, 176, 242-43.

<sup>59</sup> *Ibid.*, 240, 243.

urer of the United States, or to the Mint and assay-offices, or to the Federal Reserve banks. The abolition of the Independent Treasury System had been previously proposed to Congress by the Secretary of the Treasury, upon the recommendation of a commission composed of representatives of the Treasury Department and the Federal Reserve Board, appointed by the Secretary on April 18, 1919, to investigate and report upon the advisability of such action. The discontinuance of the subtreasuries was effected by the promulgation of a series of department circulars beginning on October 23, 1920, and ending on February 10, 1921.<sup>60</sup>

**Bureau of the Budget.** An act which, it is safe to say, exceeds in importance any other act passed since 1789 with respect to the administration of fiscal affairs, was approved on June 10, 1921. This act, known as the Budget and Accounting Act of 1921, was the culmination of years of vigorous agitation on the part of individuals, both within and without official government circles, and associations interested in promoting a greater degree of efficiency and economy in the administration of governmental affairs.<sup>61</sup> With the provisions of the act of 1921 relating to the procedure to be adopted in the preparation of the budget and the auditing of accounts, this monograph is not concerned. The act, did, however, introduce some important changes in the administrative organization of the Treasury Department, which will be noted here. Section 207 provides for the establishment in the Treasury Department of a Bureau of the Budget, in charge of a Director and an Assistant Director appointed by the President. The Bureau of the Budget is charged, primarily, with the preparation of the Budget, the Alternative Budget, and any supplemental or deficiency estimates, under rules and regulations prescribed by the President, and is given authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments. The powers and duties previously conferred upon the Division of Bookkeeping and Warrants in the office of the Secretary of the

<sup>60</sup> 41 Stat. L., 631, 654; Treasury Department, Annual reports, 1920, 167-71.

<sup>61</sup> For an account of the movement for budgetary reform in the national government, see Willoughby, The problem of a national budget, Ch. VIII (1918); also Cleveland, Evolution of the budget idea in the United States. American Academy of Political and Social Science, *Annals*, LXII, 15-35 (November, 1915).

Treasury relating to the compilation of estimates were transferred to the Budget Bureau. The Director of the Budget was empowered to appoint and fix the compensation of attorneys and other employees of the bureau, under certain restrictions enumerated in the act. The head of each department and establishment was directed to designate an officer thereof to prepare the departmental estimates under his direction, subject to regulations prescribed by the President.<sup>62</sup>

**General Accounting Office.** A second provision in the act of 1921, which modified to an even greater extent the organization of the Treasury Department, was that creating a General Accounting Office, independent of the executive departments and under the control and direction of a Comptroller General and an Assistant Comptroller General, appointed by the President, with the consent of the Senate. The term of these two officers was fixed at fifteen years, subject to removal at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress either has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment.<sup>63</sup> The act abolished the offices of the six auditors in the Treasury Department and the office of Comptroller of the Treasury, and transferred all their powers and duties, together with the duties of the Division of Bookkeeping and Warrants in the office of the Secretary of the Treasury relating to keeping the personal ledger accounts of dis-

<sup>62</sup> 42 Stat. L., 20, 22-23. The establishment of the Bureau of the Budget as an integral part of the Treasury Department, but directly responsible to the President, was the result of a compromise between the views of the House and of the Senate concerning the proper officer upon whom responsibility should be placed for the preparation of the budget. The original Senate bill, known as the McCormick bill, placed that responsibility upon the Secretary of the Treasury, whereas the House bill, known as the Good bill, imposed that responsibility upon the President. The powers and duties conferred upon the Budget Bureau, and its immediate responsibility to the President, make it, in effect, an independent bureau.—*New York Times*, April 27; May 6; May 24, 1921.

<sup>63</sup> The novel character of this provision for the removal of the Comptroller General and the Assistant Comptroller General by joint resolution of Congress has been noted in the introduction to this monograph. *Supra*, 18n.

bursing and collecting officers, so far as was not inconsistent with the act, to the General Accounting Office, to be exercised without direction from any other officer. A Bureau of Accounts was established in the Post Office Department, under the direction of a Comptroller appointed by the President, with the consent of the Senate, which was charged with the administrative examination of the accounts and vouchers of the Postal Service—work previously imposed by law upon the Auditor for the Post Office Department. The Comptroller General was vested with full power and control over the conduct of the General Accounting Office, including the appointment and removal of its officers and employees.<sup>64</sup>

**Minor Changes in Organization.** Pursuant to the provisions of Section 501 of the Dye and Chemical Control Act, approved May 27, 1921, the duties of the War Trade Board Section of the Department of State, which was thereby discontinued, were transferred to the Secretary of the Treasury, who directed the organization of a Dye and Chemical Section in the Division of Customs to take charge of this work. The Division of Public Moneys was abolished on July 1, 1921, and its duties transferred to the Division of Bookkeeping and Warrants, and on the same date the Section of Surety Bonds in the Secretary's Office was consolidated with the Division of Appointments, pursuant to an act of March 3, 1921.<sup>65</sup> The offices of Commissioner of the Public Debt and Commissioner of Accounts and Deposits, and the Division of Deposits were given statutory recognition in the act of June 16, 1921. This act also authorized the appointment of an Undersecretary of the Treasury, by the President, with the consent of the Senate, who should perform the duties of the Secretary in case of his

<sup>64</sup> The consolidation of the accounting and auditing offices of the Treasury Department had also been advocated, both officially and unofficially, many years prior to the passage of the act of 1921. Cf. Thompson, The control of national expenditures, *Political Science Quarterly*, VII, 477 *et seq.* (September, 1892); Reports of the President's Commission on Economy and Efficiency, 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 401 *et seq.*; Treasury Department, Annual reports, 1920, 51-52, 243; Collins, The problem of a national audit, *Journal of Political Economy*, XXVIII, 37-45 (January, 1920).

<sup>65</sup> 42 Stat. L., 9, 18; 41 Stat. L., 1252, 1266; Secretary of the Treasury, Annual report on the state of the finances, 1921, 118, 126, 129, 434.

death, resignation, absence or sickness.<sup>66</sup> The establishment of this office had been recommended by Secretary Houston in 1920, in lieu of the two additional Assistant Secretaries of the Treasury, whose offices had expired in accordance with the legislative, executive, and judicial appropriation act of May 29, 1920.<sup>67</sup>

**Bureau of War Risk Insurance Transferred to Veterans' Bureau.** The Bureau of War Risk Insurance, which was declared by Secretary Houston in 1920 to be the largest single administrative unit in the service of the national government, was abolished by act of August 9, 1921, and its powers and duties conferred upon the Veterans' Bureau, established by that act as an independent bureau, under the direction of the President. All activities of the Public Health Service relating to the beneficiaries of the Bureau of War Risk Insurance, except those activities relating to the operation of hospitals and dispensaries, which had been transferred to the Bureau of War Risk Insurance by Executive order dated April 29, 1921, were transferred to the Veterans' Bureau by this act. The President was authorized, should he deem it necessary and advisable for the proper medical care and treatment of the beneficiaries of the War Risk Insurance Act, also to transfer to the Director of the Veterans' Bureau, for a limited period, the operation, management, and control of specifically designated hospitals then under the jurisdiction of the Public Health Service. The title of the Veterans' Bureau was changed to the United States Veterans' Bureau by joint resolution of August 24, 1921.<sup>68</sup>

**Distribution of Duties.** A redistribution of the duties of the department among the Undersecretary and the three Assistant Secretaries of the Treasury was effected by the issuance of Department Circular No. 244, August 9, 1921. Under the new arrangement of the department, the Undersecretary was given su-

<sup>66</sup> 42 Stat. L., 29, 36, 61; Secretary of the Treasury, Annual report, 1921, 125.

<sup>67</sup> Treasury Department, Annual reports, 1920, 240, 243; 41 Stat. L., 631, 643.

<sup>68</sup> Treasury Department, Annual reports, 1920, 247; Surgeon General, Annual report, 1921, 11; 42 Stat. L., 202. Acting under the authority granted to him by the act of August 9, 1921, the President, by Executive order dated April 29, 1922, transferred forty-four hospitals with their operating personnel from the Public Health Service to the U. S. Veterans' Bureau. Cf. Secretary of the Treasury, Annual report, 1922, 88.

pervision over the office of the Commissioner of Public Debt, including the Divisions of Loans and Currency, Public Debt Accounts and Audit, and Savings, and the Register's Office; and the Office of the Commissioner of Accounts and Deposits, including the Divisions of Bookkeeping and Warrants, and Deposits, the Offices of Treasurer, Comptroller of the Currency, and the Government Actuary, the Bureau of the Budget, the Bureau of the Mint, the Federal Farm Loan Bureau, and the Secret Service Division. The Assistant Secretary "in charge of foreign loans and advances to railroads" was given supervision over foreign loans, the United States Section of the International High Commission, advances to railroads under the Transportation Act of 1920, the Bureau of Engraving and Printing, the offices of Disbursing Clerk and the General Supply Committee, the Appointments Division (Section of Surety Bonds), and the Divisions of Mails and Files, and Printing and Stationery. The Assistant Secretary "in charge of Public Health, Public Buildings, and Coast Guard," directed the work of the Public Health Service, the Office of the Supervising Architect, and the Coast Guard. The Assistant Secretary "in charge of the collection of the revenues" was given supervision over the Bureau of Internal Revenue and the Customs Division.<sup>69</sup>

**Tax Simplification Board.** The Revenue Act of 1921, approved November 23, 1921, provided for the establishment in the Treasury Department of a board, to be known as the Tax Simplification Board, and to be composed of six members, three of whom should be appointed by the President to represent the public, and three who should be appointed by the Secretary to represent the Bureau of Internal Revenue. The act imposed upon this board the duty of investigating the procedure of, and the forms used by the bureau in the administration of the internal revenue laws, and of making recommendations in respect to the simplification thereof. December 31, 1924, was fixed as the date for the termination of this board.<sup>70</sup>

<sup>69</sup> Secretary of the Treasury, Annual report on the state of the finances, 1921, 129.

<sup>70</sup> 42 Stat. L., 227, 317.

**Budget and Improvement Committee; Bureau of Supply.** On July 8, 1922, a Budget and Improvement Committee was created by order of the Secretary, to be responsible, under the direction of the Budget Officer and the Undersecretary of the Treasury, for the preparation and examination of Treasury estimates of appropriations and for the improvement of administrative methods and procedure within the Treasury Department.<sup>71</sup> A Bureau of Supply, in charge of a director to be detailed from a bureau or division of the Treasury Department, was established by Treasury Department Circular No. 283, dated March 28, 1922. The bureau was given powers broad enough to cover the purchase of material and supplies for the entire department, with the exception of the Bureau of Engraving and Printing and the purchase of distinctive paper for government securities. By supplemental order of June 16, 1922, the personnel of the various bureaus and services in the department engaged in the purchase or handling of supplies and appropriations therefor were allotted to the Bureau of Supply. This bureau was assigned, for administrative purposes, to the Assistant Secretary in charge of foreign loans.<sup>72</sup>

**Redistribution of Duties.** A reorganization of the various bureaus and divisions of the Treasury Department was effected on July 1, 1923, by order of the Secretary. Under the new plan, the administrative units are distributed between the Undersecretary and the three Assistant Secretaries as follows: Undersecretary—Bureau of the Budget, Commissioner of Accounts and Deposits, Treasurer, Comptroller of the Currency, Federal Farm Loan Bureau, Section of Statistics, and Government Actuary; Assistant Secretary “in charge of fiscal offices”—Commissioner of Public Debt, Bureau of Engraving and Printing, Mint Bureau, Secret Service Division, and Disbursing Clerk; Assistant Secretary “in charge of foreign loans and miscellaneous”—foreign loans, advances and loans to railroads under the Transportation Act of 1920, Chief Clerk, Bureau of Supply, Division of Appointments (Section of Surety Bonds), Public Health Service, and Division of Printing and Stationery; Assistant Secretary “in charge of the collection of the revenue”—Bureau of Internal Revenue, Pro-

<sup>71</sup> Secretary of the Treasury, Annual report, 1922, 88-89, 316.

<sup>72</sup> *Ibid.*, 90, 313-15.

hibition Unit, Customs Service, Coast Guard, and Supervising Architect's Office.

The Undersecretary is authorized by the order to act for, and by direction of, the Secretary in any branch of the department and represents the Secretary in dealings with the Federal Reserve Board, the War Finance Corporation, and the Farm Loan Board. The Assistant Secretary in charge of Fiscal Offices also acts under the immediate supervision of the Undersecretary. The Chief Clerk and Chief of the Division of Appointments perform their duties under the direction of the Secretary, the Undersecretary, and the Assistant Secretaries in their respective jurisdictions, but for general administrative matters relating to their offices, they are directed to report to the Assistant Secretary in charge of Foreign Loans and Miscellaneous.<sup>73</sup>

**Summary of Department Organization.** The development of administrative organization in the Treasury Department from 1860 to the present time proceeded largely, as was the case during the period prior to 1860, according to successive enactments of Congress. It was only during the emergency period of the World War that the Secretary of the Treasury exercised his authority, with the approval of the President, to create any considerable number of new bureaus and offices in the department. The special war agencies which were maintained after the emergency period had passed were, for the most part, accorded legislative recognition in appropriation acts passed by Congress. The principle of single-headed control was predominant in the organization of the department during this period. One important deviation from this principle may be noted in the creation of the Farm Loan Board in 1916. Even in this case, however, the President was authorized to designate one member of the board as Farm Loan Commissioner to act as the executive officer of the board. The work of the board may be said, therefore, to be essentially quasi-legislative in character rather than administrative.

The establishment of the Department of Commerce and Labor in 1903 permitted the transfer to that department, from the Department of the Treasury, of several services which had only a remote, if any, relation to finance administration. Another service,

<sup>73</sup> Treasury Decisions, Vol. 44, No. 1 (July 5, 1923).

unrelated to fiscal affairs, was removed from the Treasury Department by the establishment of the Veterans' Bureau in 1921. The transfer of several other activities now performed under the jurisdiction of the Treasury Department, and having little or no relation to the fiscal operations of the government, was proposed by Secretary Houston in his annual report for 1920. Included in this category are the Public Health Service, the Office of Supervising Architect, the General Supply Committee, and the Prohibition Unit of the Bureau of Internal Revenue. It was the opinion of the Secretary that the Coast Guard, which is essentially a police agency to aid in the collection of customs revenues, should remain in the Treasury Department.<sup>74</sup>

Finally, the Budget and Accounting Act of 1921 has transferred to the Budget Bureau, which, although nominally a part of the Treasury Department, is in actual practice an independent bureau directly responsible to the President, the task of preparing estimates of receipts and expenditures for the consideration of Congress; and the entire work of examining and auditing the accounts of the several departments and establishments has been transferred to the General Accounting Office, set up as an independent agency under the direction of the Comptroller General of the United States.

<sup>74</sup> Treasury Department, Annual reports, 1920, 221, 247-49.

## CHAPTER XIV

### THE DEPARTMENT OF THE NAVY

The outstanding feature in the development of administrative organization in the Navy Department from 1860 to the present time is the progress made toward the creation of a permanent body of professional officers in that department to advise the Secretary of the Navy upon questions of naval policy and operations, to co-ordinate the activities of the several administrative bureaus in the department, and to establish a continuity of naval policy, unbroken by the periodic changes in the office of the Secretary of the Navy. In this respect, as in many others, the administrative problems confronting the Navy Department have been similar to those previously noted in connection with the organization of the War Department.<sup>1</sup>

**Reorganization, 1862.** The system of administrative bureaus created in the Navy Department in 1842 continued without substantial change until after the outbreak of the Civil War. On July 5, 1862, a comprehensive act was passed reorganizing the department. Three new bureaus were established, namely, Navigation, Steam Engineering, and Equipment and Recruiting. The function of the Bureau of Equipment and Recruiting had previously been performed by the Bureau of Construction, Equipment, and Repairs, the name of which was now changed to the Bureau of Construction and Repair. The title of the Bureau of Ordnance and Hydrography was changed to the Bureau of Ordnance. Provision was made for a chief at the head of each of these new bureaus, to be appointed by the President, with the consent of the

<sup>1</sup>This particular aspect of the administrative organization of the Navy Department prior to the entrance of the United States into the World War has been admirably discussed in a paper prepared by Mr. Robert W. Neeser, Secretary of the Naval History Society, and read before the American Political Science Association at its annual meeting in December, 1916. Cf. Neeser, *The department of the navy, American Political Science Review*, XI, 59 *et seq* (February, 1917).

Senate, who should hold office for a term of four years. A clerical force for the Secretary's office and for the several bureaus was also provided in the act. The Secretary of the Navy was expressly authorized to assign and distribute among the bureaus thus created such of the duties of the Navy Department as he should judge to be expedient and proper. Under authority of this latter provision the United States Naval Observatory and Hydrographical Office was detached from the Bureau of Ordnance and transferred to the newly organized Bureau of Navigation. The Nautical Almanac Office was also transferred from the Bureau of Ordnance to the Bureau of Navigation.<sup>2</sup>

It was further provided in the act of 1862 that the duties assigned by the Secretary of the Navy to the various bureaus should be performed under his direction, and that all orders emanating from the bureaus of the department should be considered as emanating from him. This latter provision, which was also included in the act of 1842, is characterized by Mr. Neeser as "a flagrant violation of a fundamental principle," in that each bureau chief was, in practice, clothed with executive authority, in matters pertaining to the work of his bureau, equal to that of the constitutional commander-in-chief. ". . . It is this," Mr. Neeser declares, "that caused such dire confusion, extravagance, duplication of work and irresponsibility, which, according to several secretaries of the Navy, have characterized the business methods of the Navy Department for the last sixty years. Moreover, each chief of bureau was so engaged with the affairs of his own bureau that the general management of the Navy and its employment was left to a civilian totally unfamiliar with naval affairs."<sup>3</sup>

**Organization and Activities during the Civil War.** The important administrative problems which arose during the first few months of the Civil War in connection with the enlargement and maintenance of the navy revealed the defects in the organiza-

<sup>2</sup> 12 Stat. L., 510. Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 713, 764, 774. Commenting on the act of 1862 in his annual report for that year, Secretary Welles said: "The act of the 5th of July last, reorganizing the Navy Department, creates three additional bureaus. This insures a much better distribution of the labors and very much simplifies and facilitates the business of the department."—37 Cong. 3 sess. (1862-63), H. ex. doc. 1, 39.

<sup>3</sup> Neeser, *op. cit.*, 61.

tion of the Navy Department. "It was found," says Boynton, "that the amount of business pressing upon each of these bureaus was so great as to completely absorb its head in the management of his own particular department, giving him little time for the consideration of questions of general policy; and as the Secretary could not be expected to study in person the wants and operations of these bureaus, some method was needed by which these could be arranged and presented in a general view for the consideration and decision of the Secretary himself."<sup>4</sup>

The establishment, by act of July 31, 1861, of the office of Assistant Secretary of the Navy afforded an opportunity to introduce unity of direction and effort into the work of the eight administrative bureaus in the department. Mr. Gustavus V. Fox, who was appointed to that office, had retired, after serving as a naval officer for a long period of years, to engage in business. "He therefore brought to his position," says Mahan, "a close knowledge of naval conditions, which had not advanced materially beyond those of his own career, and at the same time an administrative experience which enabled him to utilize, without impeding, the separate agencies of the department's chief subordinates. There was thus introduced into the heart of the administration, in close contact with and influence upon the bureau system, the special aptitudes of the naval officer for the guidance of the war in its military phase, and for adapting to the particular conditions the broad lines of the huge expansion which the then establishment had to undergo. The activities of the establishment, of the Navy Department on its civil side, were thus harmonized with the requirements of the military situation."<sup>5</sup>

Other agencies were created in the department, from time to time during the Civil War, to investigate and report to the Secretary of the Navy on questions of special importance and requiring professional knowledge, and to advise the Secretary concerning naval plans and operations. In June, 1861, a commission consisting of two naval officers, one army officer, and the Superintendent of the Coast Survey, was appointed by the Secretary of the Navy to investigate the coasts and harbors of the United States, their access and defenses.<sup>6</sup> In a report sub-

<sup>4</sup> Boynton, *The history of the navy during the rebellion*, I, 20 (1867).

<sup>5</sup> Mahan, *Naval administration and warfare*, 73-74 (1908).

<sup>6</sup> 37 Cong. 2 sess. (1861-62), S. ex. doc. 1, 6.

mitted to Congress on July 4, 1861, Secretary Welles recommended to Congress the appointment of a board to inquire into and report on iron-clad steamers. Such a board was convened on August 8, 1861, in accordance with an act of August 3, which authorized the Secretary to appoint a board of three skillful naval officers to investigate plans and specifications for the construction of iron- or steel-clad steamships.<sup>7</sup>

A "commission of conference," composed of naval officers, was created by Secretary Welles to discuss and determine questions concerning naval plans and operations, while a board composed of the chiefs of bureaus was subsequently convened for the purpose of "considering and acting upon such subjects connected with the naval service as may be submitted to them by the department." A "permanent commission" was appointed in 1863 to report to the Secretary upon all questions relating to naval science submitted for their consideration by that officer.<sup>8</sup> Mention should also be made of the work of the Chief Clerk in the Secretary's office, who not only supervised the entire clerical force of the department, but also exercised direct management over a large portion of the business operations of the department. "He was really a confidential secretary placed over one branch of the affairs of the department."<sup>9</sup>

<sup>7</sup> 38 Cong. 1 sess. (1863-64), H. ex. doc. 69, 1-2; 12 Stat. L., 286.

<sup>8</sup> Neeser, *op. cit.*, 61.

<sup>9</sup> Boynton, *op. cit.*, I, 20. Several attempts were made during the Civil War to create, by statute, a Naval Advisory Board or Board of Admiralty. A bill was introduced on April 11, 1864, in the House of Representatives, to establish a Board of Naval Administration, which was referred to the Committee on Naval Affairs, but never reported to the House. Admiral Farragut is reported in the diary of Gideon Welles, Secretary of the Navy, 1861-1869, as favoring a Board of Admiralty. Welles, himself, wrote on the subject as follows: "I can perceive arguments in its favor which would relieve the Secretary of labor, provided rightly constituted, and properly regulated. There would, however, be jealousies in the service of such a board, as there are of the Assistant Secretary. It would be claimed that it dictated to the Secretary and abused his confidence. It would not be beneficial to the government and country." An amendment was offered in the House on February 4, 1865, to the naval appropriation bill, which authorized the President, with the consent of the Senate, to appoint a Board of Admiralty, "to deliberate in common and to advise the Secretary on matters submitted by him relative to naval organization and legislation, construction, equipment, and armament of vessels, navy-yards, and the direction, employment, and disposition of the naval forces in time of war."

"Individual power and individual responsibility," declares Admiral Mahan, "are the fundamental merits of the bureau system. Its defect is lack of coördination."<sup>10</sup> The war emergency, involving the sudden and immense expansion of the work allotted to the bureaus in the Navy Department, served to emphasize the merits of the bureau system, while through the medium of the office of Assistant Secretary and special advisory boards the defects of that system were, in large measure, overcome. The advent of peace in 1865, however, resulted in the discontinuance of the various advisory commissions. Assistant Secretary of the Navy Fox resigned, and "with him disappeared what had been virtually an institution rather than an individual or an office." The office of Assistant Secretary of the Navy was abolished by act of March 3, 1869.<sup>11</sup>

Some minor changes in the organization of the Navy Department during the war period and immediately following the conclusion of hostilities deserve to be noted. An act of July 25, 1861, for the better organization of the Marine Corps, provided for the following staff officers: Adjutant and Inspector, Paymaster, Quartermaster, and two Assistant Quartermasters. The Marine Corps was actively engaged during the Rebellion in support of the naval forces, the Colonel Commandant reporting annually to the Secretary of the Navy on the disposition and operations of the Corps.<sup>12</sup> The United States Naval Academy was removed to Newport, R. I., in May, 1861, but was returned to Annapolis in the summer of 1865, in accordance with an act of May 21, 1864.

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This proposal was favored in the Committee of the Whole, but was defeated by a small majority in the House. The same amendment was again offered in the House on February 16, 1865, but was rejected by a decisive vote. A bill to establish a Board of Survey to supervise and control the bureaus in the Navy Department, and virtually to supersede the Secretary, was introduced in the Senate on December 11, 1867, and in the House on December 16, 1867. The bill was reported to the Senate by the Committee on Naval Affairs on June 12, 1868, but received no further consideration. The House bill was never reported out of committee.—38 Cong. 1 sess. (1863-64), Congressional Globe, 1531; 38 Cong. 2 sess. (1864-65), *Ibid.*, 601-02, 628, 823, 869; 40 Cong. 2 sess. (1867-68), *Ibid.*, 145, 209, 3074; Diary of Gideon Welles (ed. Welles), II, 233, 236, 237, 240; III, 247.

<sup>10</sup> Mahan, *op. cit.*, 73.

<sup>11</sup> *Ibid.*, 78; 15 Stat. L., 283, 296. An additional Assistant Secretary of the Navy, to be appointed for a period of six months, was authorized by act of May 26, 1866.—14 Stat. L., 54.

<sup>12</sup> 12 Stat. L., 275; Collum, History of the U. S. marine corps, 121 (1903).

The Academy was placed under the jurisdiction of the Bureau of Navigation upon the establishment of that bureau in 1862, but on March 1, 1867, it was placed under the immediate supervision of the Secretary of the Navy, although the administrative routine and financial management of the institution was conducted through the Bureau of Navigation until March 11, 1869, when all official connection between that bureau and the Academy ceased.<sup>13</sup>

**Naval Examining Board.** An act of July 16, 1862, to "establish and equalize the grade of line officers of the United States Navy," provided for the appointment of an advisory board at least once in every four years to examine the active list of line officers and to report to the Secretary of the Navy, in writing, those who, in the opinion of the board, were worthy of further promotion. This board was to consist of not less than three naval officers, appointed by the Secretary of the Navy, and senior in rank to those officers to be reported upon. An amendment to this act, approved April 21, 1864, provided for the appointment of this board by the President. The board became known as the Naval Examining Board, and its appointment, composition, and powers were permanently fixed by the Revised Statutes in 1874.<sup>14</sup>

**Office of Naval Solicitor Transferred to Department of Justice; Naval Observatory and Hydrographical Office Divided; Office of Admiral.** The President was authorized by act of March 2, 1865, to appoint, with the consent of the Senate, a "Solicitor and Naval Judge Advocate General" in the Navy Department, to serve during the rebellion and one year thereafter. Annual appropriations were voted for the maintenance of this office until July 20, 1868, when an act was passed providing for its discontinuance on March 4, 1869. A deficiency appropriation act of April 10, 1869, however, continued the office until June 30, 1870. By act of June 22, 1870, the office was permanently established and transferred to the Department of Justice, the title being changed to that of Naval Solicitor.<sup>15</sup> The United States Naval Observatory and Hydrographical Office was divided by act of June 21, 1866, which established a Hydrographic Office attached to the Bureau

<sup>13</sup> Checklist, 770; 13 Stat. L., 80-85.

<sup>14</sup> 12 Stat. L., 583, 584; 13 Stat. L., 53; Revised Statutes, 257.

<sup>15</sup> 13 Stat. L., 468; 15 Stat. L., 92, 103; 16 Stat. L., 9, 10; 162.

of Navigation. The Naval Observatory continued as a separate agency under the supervision of the Bureau of Navigation.<sup>16</sup> The rank of Admiral of the Navy was authorized by act of July 25, 1866. The Admiral was allowed the services of a secretary, and his office constituted a separate branch of the Navy Department until the grade was abolished by act of January 24, 1873.<sup>17</sup>

**Movement in Favor of an Advisory Board.** The period from 1870 to the outbreak of the Spanish-American War in 1898 was chiefly characterized, with respect to the administrative organization of the Navy Department, by successive attempts to provide an advisory board or commission in the department to consult with the Secretary on questions of general naval policy and to correlate the activities of the several administrative bureaus. Mahan formulates this all-important administrative problem as follows: "The Secretary frequently comes to his office without previous experience, and is necessarily immensely occupied with numerous calls on the side where the Department touches the country rather than the Navy. He is apt to find himself, therefore, not only called upon to decide between several persons advocating different views on matters largely new to him but to do so under conditions of pre-occupation which impede adequate attention. The system provides him neither a formulated policy nor an adviser; for, while the bureau chief can properly give advice and argue his views, it needs little knowledge of human nature to see that he can seldom be free from prepossession. He is, in short, rather an advocate than an adviser."<sup>18</sup>

Secretary of the Navy Thompson endeavored to unify the work of the department on March 15, 1877, by creating a board consisting of the chiefs of the several bureaus, which should meet twice a week to discuss matters relating to the work of their respective bureaus. On April 22, 1878, a bill was introduced in the House of Representatives which proposed to create a permanent Board of Assistants in the Navy Department, to act as a body of professional advisers to the Secretary and to aid that officer in unifying the system of naval administration. A conference was held on May 7, 1878, between the House Committee on Naval

<sup>16</sup> 14 Stat. L., 69.

<sup>17</sup> 14 Stat. L., 222, 223; 17 Stat. L., 418.

<sup>18</sup> Mahan, *op. cit.*, 63.

Affairs, the Secretary of the Navy, and the bureau chiefs, to discuss the merits of this bill. The testimony of the heads of the bureaus revealed a difference of opinion as to the advisability of creating such a board of assistants. Mr. Easby, Chief of the Bureau of Construction and Repair, held that such a board was unnecessary, because of the fact that the board of bureau chiefs did all of the work contemplated for this new board. He did, however, recommend that the board of bureau officers be placed upon a statutory basis. Secretary Thompson, although not opposed to the creation of another board in the department, held that the duties of such a board should not be prescribed by law but left to the discretion of the Secretary, thereby preserving, unimpaired, the absolute control of that officer over the entire naval establishment. A substitute bill was reported to the House on June 11, 1878, by the Committee on Naval Affairs, but the measure never got beyond second reading.<sup>19</sup> Even the board of bureau chiefs created in the department by order of Secretary Thompson was discontinued, having proved of little value in coördinating and systematizing the work of the department.<sup>20</sup>

An act of August 5, 1882, making appropriation for the construction of two steam-cruising vessels of war, empowered and directed the Secretary of the Navy to organize a board composed of five naval officers and two civil experts in naval or marine construction, to be called the Naval Advisory Board. The powers of this board, which was to continue only during the period required for the construction, armament, and trial of the vessels to be constructed, were expressly limited to the giving of advice and assistance to the Secretary, the examination and inspection of materials and construction, and the general supervision of the work, under the Secretary's direction. The board was forbidden to make or enter into any contract, or to direct or control any naval officer, bureau chief, or contractor. Further provision for the construction of these vessels and the continuance of the Naval Advisory Board was made in the act of March 3, 1883.<sup>21</sup> Other temporary boards and commissions established about this time

<sup>19</sup> 45 Cong. 2 sess. (1878-79), H. misc. doc. 63, 1, 12-15; 45 Cong. 2 sess. Congressional Record, Vol. 7, 2711, 4467.

<sup>20</sup> Neeser, *op. cit.*, 62.

<sup>21</sup> 22 Stat. L., 284, 291; 472, 477.

were the Navy-Yard Commission appointed by the Secretary of the Navy on October 9, 1882, under the authority of the naval appropriation act of August 5, 1882, and the Gun-Foundry Board appointed by the President on April 2, 1883, in pursuance of the naval appropriation act of March 3, 1883.<sup>22</sup> Section 2 of the naval appropriation act of August 5, 1882, authorized the Secretary of the Navy to appoint boards of competent naval officers to examine vessels not in actual service at sea and vessels at sea as soon as practicable after their return to the United States. Thereafter all vessels were to be examined upon their return from foreign stations, and all vessels in the United States every three years, when practicable. The boards were required to report to the Secretary, in writing, on the condition of the vessels so examined.<sup>23</sup>

William Chandler, who served as Secretary of the Navy during the period from 1882 to 1885, was a staunch defender of the existing system of administrative organization in the Navy Department. In his annual report for 1883, he commented on the organization of the department as follows: "Criticisms have at times been freely made of the bureau system which upon consideration seem unfounded. All methods of subdivision of labor have their defects, but such, however, are indispensable in every large governmental or civil establishment. It may fairly be claimed that the organization of this Department into Bureaus whose chiefs represent and act only in the name of the principal head, as he in turn only executes the orders of the President as to all matters connected with the naval establishment, is the best that can be devised. Advisory boards, whether organized by direction of law or on the motion of the Department, are unobjectionable so long as their functions are limited to giving advice or negativing injurious action. But attempts to vest in them affirmative power, or to establish a Board of Admiralty to govern the Navy, would tend to destroy

<sup>22</sup> 22 Stat. L., 284, 289; 472, 474; 48 Cong. 1 sess. (1883-84), H. ex. doc. 1, pt. 3, 15; 48 Cong. 2 sess. (1884-85), H. ex. doc. 1, pt. 3, 30. Secretary Chandler, in his annual report for 1884, commented as follows on the work of the Naval Advisory Board: "Occasion is gladly taken to state that whatever differences of opinion have arisen concerning the details of the work of the Department, complete personal friendship and harmonious relations have existed between the Secretary, all the chiefs of the bureaus, and the Naval Advisory Board. This condition has contributed largely to whatever success has been achieved."—*Ibid.*, 26.

<sup>23</sup> 22 Stat. L., 284, 296.

unity and vigor of action and would be no improvement upon the organization by Bureaus.”<sup>24</sup>

His successor, Secretary Whitney, on the contrary, returned a severe indictment against the existing organization of the department, in his annual report for 1885. Commenting upon the establishment of the bureau system in 1842, he said: “It was supposed at the time . . . that the Bureau chiefs would be able to sit in consultation with the Secretary and that the Department would not lack intelligent guidance. But the inevitable result of throwing large executive duties upon any man is to disqualify him for council. At the present time this function is not performed at all. The Secretary may at once be eliminated from the problem. A civilian ordinarily, not skilled in the art of war, nor having the technical knowledge with reference to its implements; having no personal staff, his separate office force consisting, as estimated for and appropriated by Congress, of but one stenographer, one clerk, and three messengers—all the other force having general clerical work. Thus it happens, as it has happened for the last twenty-years, that the Department drifts along doing without consideration whatever is done, and with no intelligent guidance in any direction.”

In substantiation of his charges, Secretary Whitney cited the case of the battleship “Omaha,” upon which four bureaus in the department had been working, independently and not always in harmony, in producing their respective parts of the completed ship, with the result that when she was ready for sea, her space had been so completely appropriated that she had barely coal room enough for a cruise of four days. “It may be said,” declared Whitney, “that the Secretary should call the chief constructor and designing engineer and the other bureau chiefs and ask them to sit down and discuss with him the problems of the Department. They would be very competent to assist him in that capacity, but, in the first place, they are too fully occupied with the executive work to leave them any time for such investigations as could be of any service to the Secretary; and, in the second place, the responsibility is not placed on them.” While convinced that the creation of the Naval Advisory Board in 1883 was a benefit in many respects and

<sup>24</sup> 48 Cong. 1 sess. (1883-84), H. ex. doc. 1, pt. 3, 23.

a substantial aid to the Secretary, Whitney felt that it had undertaken the executive function and had practically superintended and performed the work itself, instead of acting in an advisory capacity, leaving the responsibility for the work with the bureau. "My brief experience in this Department," he concluded, "has satisfied me that whatever changes in its organization may be devised, it is of first necessity to separate, as much as practicable, the work of direction and deliberation from the details of execution."<sup>25</sup>

Benjamin Tracy, who succeeded Whitney as Secretary of the Navy on March 5, 1889, called attention, in his first annual report, to the defects in the organization of the department, as it existed when he assumed office. ". . . The details of administering the Navy, as an existing force, its vessels in commission, its officers and its crews, were scattered, without system or coherence, among a variety of offices, bureaus, and boards. . . . To all these fragments of authority there was no central unity of direction, except such as could be given by the personal attention of the Secretary, to the exclusion of that broad and general supervision over all executive business which is required by a department as comprehensive as the Navy; and cases were not infrequent where a ship received simultaneous orders from three separate bureaus which were so directly contradictory that it was impossible to execute them."<sup>26</sup>

**Transit of Venus Commission; Judge Advocate General; Naval Training Station.** Secretary Tracy effected a partial reorganization of the department soon after taking office. Before noting the scope of the rearrangement introduced at that time, it may be well to indicate briefly the changes that had been made in the department since 1870. A commission known as the Transit of Venus Commission was established in the department in accordance with an act of March 3, 1871, which provided that all appropriations made for the observations of the transits of Venus should be expended, subject to the approval of the Secretary of the Navy, under the direction of a commission to be composed of the Superintendent and two of the professors of mathematics of the navy attached to the Naval Observatory, the President of the National

<sup>25</sup> 49 Cong. 1 sess. (1885-86), H. ex. doc. 1, pt. 3, 38-40.

<sup>26</sup> 51 Cong. 1 sess. (1889-90), H. ex. doc. 1, pt. 3, 37-38.

Academy of Sciences, and the Superintendent of the Coast Survey.<sup>27</sup> The office of Naval Solicitor in the Department of Justice was abolished by act of June 19, 1878, but an act of June 8, 1880, created the office of Judge Advocate General in the Navy Department, to which was assigned the duties previously performed by the Solicitor.<sup>28</sup> A Naval Training Station was temporarily established at Newport, R. I., by General Order No. 257 of the Navy Department, issued on December 16, 1880. Navy Department Circular No. 33, dated June 4, 1883, announced its permanent establishment, in charge of a commandant, under the direction of the chief of the Bureau of Navigation.<sup>29</sup>

**Office of Library and Naval War Records.** An officer in the Bureau of Navigation was appointed on June 9, 1882, to have charge of the library and war records of the department. The first appropriation "for professional books for department library" was voted in an act approved August 5, 1882. Soon after the organization of the library, the compilation of naval war records was begun and specific appropriation for a clerical force to carry on that work was made by act of July 7, 1884, and subsequent acts. A clerical force for the library was first authorized by act of July 11, 1888. Although separate appropriations for the clerical force of these two divisions in the Bureau of Navigation continued to be made, they were, from the beginning, in charge of a single officer, and the joint title of Office of Library and Naval War Records was applied to them. The office was transferred from the Bureau of Navigation to the immediate office of the Secretary of the Navy on October 21, 1889.<sup>30</sup>

**Assistant Secretary; Office of Naval Intelligence.** The appointment of an Assistant Secretary of the Navy from civil life, by the President, with the consent of the Senate, was authorized by act of August 5, 1882, but the office was abolished by act of March 3, 1883. Secretary of the Navy Chandler called especial attention to the necessity for such an officer, appointed from civil

<sup>27</sup> 16 Stat. L., 526, 529.

<sup>28</sup> 20 Stat. L., 178, 205; 21 Stat. L., 164.

<sup>29</sup> Checklist, 810.

<sup>30</sup> *Ibid.*, 784; 22 Stat. L., 219, 243; 23 Stat. L., 159, 185; 25 Stat. L., 256, 282.

life, to assist the Secretary in the discharge of his duties, but the office was not reestablished until July 11, 1890.<sup>31</sup> An Office of Naval Intelligence was established by order of the Secretary of the Navy, dated March 23, 1882, as a part of the Bureau of Navigation. The office was placed under the supervision of the Assistant Secretary of the Navy in 1890, but was again transferred to the Bureau of Navigation by order of the Secretary issued on April 26, 1898.<sup>32</sup>

**Naval War College; Reorganization of Staff Departments of the Marine Corps.** A Naval War College was established at Newport, R. I., by Navy Department General Order No. 325, October 6, 1884, which placed the college under the Bureau of Navigation. By General Order No. 365, January 11, 1889, issued in pursuance of an act of September 7, 1888, the College was combined with the Naval Torpedo Station at that port, and thereby transferred from the Bureau of Navigation to the Bureau of Ordnance. Upon the recommendation of the Secretary of the Navy, separate provision for the Naval War College under the Bureau of Navigation was made in the appropriation act of June 30, 1890.<sup>33</sup> The naval appropriation act of September 7, 1888, more definitely organized the staff departments of the Marine Corps by making separate provision for chief clerks, clerks, and messengers in the offices of the Colonel Commandant, Adjutant and Inspector, Paymaster, Quartermaster, and Assistant Quartermaster.<sup>34</sup>

**Minor Changes in Organization, 1889-1894.** Secretary of the Navy Tracy introduced a number of changes in the department during his term of office, especially in the Bureaus of Navigation, and Equipment and Recruiting. It was his purpose to charge the former with the supervision of the entire fleet, including vessels, officers, and seamen—training, assignment, inspection, and practice. He proposed to give to the latter the supervision of miscellaneous branches of equipment, and of subordinate officers connected therewith, or engaged in investigations not pertaining to

<sup>31</sup> 22 Stat. L., 219, 243; 531, 550; 26 Stat. L., 228, 254; 48 Cong. 2 sess. (1884-85), H. ex. doc. 1, pt. 3, 26.

<sup>32</sup> 55 Cong. 3 sess. (1898-99), H. ex. doc. 3, 322, 374.

<sup>33</sup> Checklist, 781; 25 Stat. L., 458, 459.

<sup>34</sup> 25 Stat. L., 458, 470.

administration proper. An order issued on June 25, 1889, transferred the Nautical Almanac Office and the Naval Observatory from the Bureau of Navigation to the Bureau of Equipment and Recruiting, and the United States Naval Academy was again placed under the supervision of the Bureau of Navigation. Upon the recommendation of the Secretary, the title of the Bureau of Equipment and Recruiting was changed to the Bureau of Equipment in the naval appropriation act of March 3, 1891, and that of the Bureau of Provisions and Clothing to the Bureau of Supplies and Accounts in the act of July 19, 1892.<sup>35</sup>

By Navy Department General Order No. 372, 1889, a board was established, composed of the chiefs of the Bureaus of Yards and Docks, Ordnance, Equipment, Construction and Repair, and Steam Engineering, to have general supervision over the work of designing, constructing and equipping new war vessels.<sup>36</sup> A School of Application of the United States Marine Corps was established by General Order No. 1, May 1, 1891, in charge of a director of instruction, under the supervision of the Colonel Commandant of the Marine Corps.<sup>37</sup> A Naval Medical School, under the supervision of the Chief of the Bureau of Medicine and Surgery, was organized by General Order No. 89, May 27, 1902.<sup>38</sup> The Naval War College, the Naval Training Station, and the Naval Torpedo Station, all located at Newport, R. I., were consolidated by General Order No. 421, March 14, 1894, under one command, and designated as the Naval Station, Newport, R. I.<sup>39</sup>

**Outstanding Defect in Organization at the Beginning of the Spanish-American War.** At the outbreak of War with Spain, the Navy Department found itself forced to meet the serious problems connected with the maintenance and operations of the fleet without the assistance of a permanent body of naval officers, charged with the duty of preparing naval plans and of rendering professional advice to the Secretary of the department. Captain I. N. Hollis, a naval officer, had called especial attention to this

<sup>35</sup> 51 Cong. 1 sess. (1889-90), H. ex. doc. 1, pt. 3, 37-40; Checklist, 764, 770, 774; 26 Stat. L., 799, 802; 27 Stat. L., 236, 243.

<sup>36</sup> 51 Cong. 1 sess. (1889-90), H. ex. doc. 1, pt. 3, 39.

<sup>37</sup> Collum, *op. cit.*, 286-99.

<sup>38</sup> Checklist, 764.

<sup>39</sup> *Ibid.*, 782.

defect in the naval service, in an article published in August, 1897, as follows: "At present we have no body of officers charged with the preparation of plans for war. We have a War College, which is doing much in a general way to encourage the study of strategy, tactics, history, and international law; a naval intelligence office, to collect information about foreign ships and naval defenses; and a board of bureau chiefs to decide upon contracts and the types of ships for national defense. What we really need is a general staff to coördinate the three. In spite of the anomalies and conflicts in the duties of the bureaus, the present division of the Department into independent bureaus for details of building and manning the navy would be fairly efficient if we had besides a naval staff to whom might be referred all questions of types, strategy, and tactics. The plans put forward to this end have failed through the fear that such a staff might in the course of time absorb all the functions of the Navy Department to the great detriment of efficiency in details of personnel and materials. If the officers of this staff were made simply the military advisers of the Secretary, with duties limited by law to the preparation of plans for war and the general movements of ships for defense and attack, and with no authority over the technical details allotted to the bureaus, the danger would be remote."<sup>40</sup>

**Naval War Board.** In the absence of a general staff, such as proposed by Captain Hollis, a Naval War Board, or Naval Strategy Board, as it was sometimes called, was created for the war emergency. It was the duty of this board to advise the Secretary in regard to the department's strategic policy, and to this end it prepared for his consideration and signature orders affecting this policy. The board was fortunate in having at its disposal a plan of action previously prepared by the Naval War College, which was adopted at the outset as the basis for naval operations during the war. Secretary Long, commenting upon the work of this board in his annual report for 1898, said: "The Naval War Board . . . was constantly in session at the Navy Department. It was equal to every demand and through it proper control was exercised by the Department over all movements in the field; at the same time all

<sup>40</sup> Hollis, A new organization for the navy, *Atlantic Monthly*, LXXX, 318-19 (August, 1897).

officers there were left ample discretion and were never hampered in their work. The board was charged with delicate and most important duties, and yet the Department is not aware of an error in its performance of them."<sup>41</sup>

**Minor Changes in Organization.** Some minor changes in the organization of the Navy Department were effected during the period of the Spanish-American War. By order of the Secretary, dated March 19, 1898, the personnel and administration of the United States Naval Home were transferred from the Bureau of Yards and Docks to the Bureau of Navigation.<sup>42</sup> A Coast Signal Service was organized for the duration of the war, by order of April 9, 1898, in conformity with the recommendations of a board convened by order of the department on October 18, 1897, "for the purpose of considering the establishment of coast signal stations for naval defense."<sup>43</sup> Mention has previously been made of the transfer, by order of the Secretary dated April 26, 1898, of the Naval Intelligence Office from the office of the Assistant Secretary to the Bureau of Navigation.<sup>44</sup> The Hydrographic Office was transferred from the Bureau of Navigation to the Bureau of Equipment by act of May 4, 1898.<sup>45</sup> The order consolidating the Naval War College, Naval Training Station, and Naval Torpedo Station at Newport, R. I., was revoked by General Order No. 496, August 26, 1898, which restored these establishments to their former status as separate institutions.<sup>46</sup> The grade of Admiral of the Navy was reestablished by act of March 2, 1899, and the Office of Admiral again became a branch of the Navy Department.<sup>47</sup>

**Naval Engineer Corps.** The long-standing dissatisfaction of engineer officers in the navy with their position as subordinate to line officers, and the increased importance of engineers in the operation of modern war vessels, led to the passage of an act on

<sup>41</sup> 55 Cong. 3 sess. (1898-99), H. ex. doc. 3, Vol. 1, 60; Vol. 2, 33-34. Cf. Neeser, *op. cit.*, 64.

<sup>42</sup> Checklist, 1790. The title of the Naval Asylum at Philadelphia was changed to the Naval Home in the appropriation act of June 30, 1890.—26 Stat. L., 189, 196.

<sup>43</sup> 55 Cong. 3 sess. (1898-99), H. ex. doc. 3, 386, 394.

<sup>44</sup> *Supra*, 311.

<sup>45</sup> 30 Stat. L., 369, 374.

<sup>46</sup> Checklist, 782.

<sup>47</sup> 30 Stat. L., 995.

March 3, 1890, which provided for the interchange of line and engineer officers, upon examination, and the training of all future officers in both branches of the service, to be transferred from one to the other as might be convenient. A bill designed to increase the importance of the Engineer Corps had been introduced in both Houses of Congress three years before, which proposed to place at the head of the Bureau of Engineering a Director General of Naval Engineering, with the rank of Rear Admiral, whose duties should comprise everything relating to engineering material and personnel, and who should be a member of every naval board concerned with the policy of the navy. This bill encountered the determined opposition of line officers of the navy and was defeated in Congress.<sup>48</sup>

**The General Board.** The Naval War Board created during the War with Spain, being merely a temporary organization, was discontinued after the cessation of hostilities. The advantages of such an advisory commission or board, however, had been clearly demonstrated, and, as a result of the experience gained during the period of emergency, a General Board was established by Navy Department General Order No. 544, March 13, 1900, charged with the general function of considering "questions relating to the efficient preparation of the fleet in case of war and for the naval defense of the coast." The powers of this board, which was composed of the Admiral of the Navy, the Chief of the Bureau of Navigation, the Chief Intelligence Officer, and the President of the Naval War College, were purely advisory in character, all of its communications being addressed to the Secretary of the Navy. Its establishment, however, was a distinct step forward in the direction of the creation of a general staff in the Navy Department.<sup>49</sup>

**Proposed Changes in Organization.** A plan to simplify the organization of the Navy Department in the interest of economy and efficiency was proposed by Secretary Long in his annual report

<sup>48</sup> 30 Stat. L., 1004; 54 Cong. 1 sess. (1895-96), Congressional Record, Vol. 28, Pt. 1, 106, 582. Cf. Argument of the Naval Association in relation to the bill H. R. No. 3618 (Senate No. 735); Hollis, *op. cit.*, 311 *et seq.*

<sup>49</sup> 56 Cong. 2 sess. (1900-01), H. ex. doc. 3, 19. Cf. Neeser, *op. cit.*, 64-65.

for 1899 and again in 1900, which called for the consolidation of the Bureaus of Construction and Repair, Steam Engineering, and Equipment. "Under the present system," declared the Secretary, "from the inception of its design until completed and placed in commission, the plans and specifications of a naval vessel are in the hands of three bureaus, each with a distinct organization, each having exclusive jurisdiction within certain lines, and all charged with the duty of carrying on work within, but not beyond, their respective provinces, as nearly as may be at the same time. Such a system is, in practical administration, cumbrous and expensive, and from its very nature tends to develop controversies respecting the scope of each bureau's duties and to occasion friction, delay, and want of harmony in doing whatever approaches border lines of jurisdiction."<sup>56</sup> Despite the reasonableness of this recommendation, Congress failed to authorize the proposed consolidation.

Although by law given no precedence over the other bureaus in the department, the Bureau of Navigation had acquired a priority in rank because of the character of the duties assigned to it. In addition to its primary function of the administration and direction of personnel, this bureau was charged with the administration of the naval forces in preparation for war—their organization and mobilization, the direction of the Naval War College and the Naval Intelligence Office, and the execution of all plans of campaign. Admiral Henry C. Taylor, Chief of the Bureau of Navigation, who was one of the foremost advocates of the establishment of the General Board in 1900, outlined in detail the duties performed by that bureau, in his annual report for 1902. These duties he considered to be too varied in character to be administered properly by one bureau; rather, they should be grouped in natural subdivisions, with responsible heads working in harmony under a single chief.

"To insure this large control and closer responsibility," said Admiral Taylor, "the methods of a general staff are desirable. Efforts have been made since 1893 to develop such methods, but without legislation by Congress. Up to the present moment a marked success has attended this development, and today we see the Bureau of Navigation, General Board, Office of Naval Intelligence,

<sup>56</sup> 56 Cong. 2 sess., H. ex. doc. 3, 27-28; 56 Cong. 1 sess. (1899-1900), H. ex. doc. 3, 56.

War College, and Board of Inspection and Survey drawing steadily closer together as component parts of a general staff. We can, however, go no further without congressional legislation which shall establish a general staff with the control necessary to administer more effectively the affairs of the fleet. There is needed a general staff and a chief of the general staff, who by direction of the Secretary, shall be responsible for the personnel and the efficiency of the fleet in commission; who shall, in fact, direct, under the Secretary, the military affairs of the fleet and be responsible to him for its conditions."<sup>51</sup> This, and subsequent recommendations coming from experienced naval officers and Secretaries of the Navy, however, met with no response in Congress.<sup>52</sup>

**Reorganization of Department, 1909.** On February 26, 1909, a board appointed by President Roosevelt, composed of two former Secretaries, two high naval officers, and a member of Congress, submitted a basic plan for the reorganization of the Navy Department. In spite of the fact that this report was the work of men with extensive experience in naval administration and warfare, and was supported, in general, by both civil and military officers in the Navy Department, Congress again failed to respond.<sup>53</sup> Steps were taken by Secretary Newberry, however, to reorganize the department by administrative regulation, as far as that was possible, and this work was continued and reached its fruition under his successor, Secretary Meyer, who assumed office on March 5, 1909. The latter appointed several boards composed of officers of varied experience in the Navy Department, navy-yards, and fleet administration, to assist him in carrying out the proposed changes, the most important of which was the Swift Board, which was directed to digest the previous reports and opinions before the department, and to present a comprehensive plan for continuing the reorganization begun by the previous administration.<sup>54</sup>

<sup>51</sup> Navy Department, Annual reports, 1902, 415.

<sup>52</sup> *Ibid.*, 1903, 5-6; 1906, 5-6. Captain A. T. Mahan published two articles in February, 1903, in which he especially emphasized the necessity of some "continuous institution, interior to the legalized system of administration" in the Navy Department, which would supply the defect inherent in the temporary tenure of the Secretary of the Navy, by formulating and maintaining a traditional naval policy.—Mahan, *op. cit.*, 3, 51.

<sup>53</sup> Navy Department, Annual reports, 1910, 5. Cf. Neeser, *op. cit.*, 66.

<sup>54</sup> Navy Department, Annual reports, 1909, 10.

Secretary Meyer, in his annual report for 1909, outlined the changes introduced in the department on December 1, 1909. "To supply the information and the responsible advice which the Secretary lacks at present," he reported, "the department has decided to detail officers of rank, specially fitted by experience, and of recognized ability in their several fields, as aids, for special branches of effort and study. The officers selected will, so far as practicable, be flag officers, who will each keep closely informed of the work of the department in his particular division and will advise the Secretary concerning it. The aids so detailed will have no supervisory or executive power or authority, and will act solely in an advisory capacity." The officers so detailed were four in number, namely, an aid for operations, who should advise the Secretary as to strategic and tactical matters in conjunction with the General Board, and also advise regarding the movement and disposition of naval vessels; an aid for personnel, who should advise the Secretary on matters pertaining to the Bureau of Navigation, the Bureau of Medicine and Surgery, the Office of the Judge Advocate General, the naval examining and retiring boards, and the naval militia; an aid for materiel who should advise the Secretary generally on matters concerning the construction, arming, equipment, and supply of naval vessels, and the management of navy-yards; an aid for inspections, who should advise the Secretary on all inspections coming under the jurisdiction of the several inspection officers and boards.<sup>55</sup>

"It is the hope and expectation of the department," said Secretary Meyer, "that the detail of four officers of recognized ability and experience, as aids to the Secretary, will result in marked improvement in the naval service and in the introduction of reforms which have hitherto been without recognition. . . . The aids, who will assist the Secretary in the general matters before the department, will not be allowed to burden themselves with details which belong to the bureaus, and will thus be free to discuss policies and reforms with the Secretary. . . . With the assistance of these aids, the Secretary is provided with a minimum of advisers corresponding to the natural grand divisions of the department, the

<sup>55</sup> *Ibid.*, 1909, 8-9. Cf. Meyer, The reorganization of a department of the government, I (Paper read at the first meeting of the Efficiency Society, held in New York City, March 18-19, 1912).

object being to arrange the duties so that each aid will make himself responsible to the Secretary for the advice given in matters pertaining to his own duties. Thus the Secretary will be able to keep in closer touch with the business of the Navy, and will aim to produce more economical administration with greater efficiency.”<sup>58</sup>

With a view to grouping still further the business of the department, so that the Secretary might be relieved of some of the details, the Marine Corps, the Bureau of Yards and Docks, the Solicitor’s Office, and the Office of the Library and Naval War Records, were placed under the general supervision of the Assistant Secretary.<sup>57</sup> The Office of Solicitor and Judge Advocate General had been previously divided by act of May 22, 1908, which created the office of Solicitor of the Navy Department.<sup>58</sup> The Naval Intelligence Office and the Naval War College were detached from the Bureau of Navigation, and the work in connection with the naval militia was transferred from the Office of the Assistant Secretary to the Division of Personnel.<sup>59</sup>

**Bureau of Equipment Abolished; Office of Naval Militia.** In accordance with the recommendation of Secretary Meyer in his annual report for 1909, the Bureau of Equipment was temporarily abolished by act of June 24, 1910, which authorized the Secretary of the Navy to distribute the duties assigned to that bureau among the other bureaus and offices in the department. Pursuant to this act, Changes in Navy Regulations No. 11, 1909, were issued by the Secretary on June 27, 1910, with the approval of the President, which transferred the Hydrographic Office, the Nautical Almanac Office, and the Naval Observatory to the Bureau of Navigation. Subsequent annual naval appropriation acts continued this rearrangement until the Bureau of Equipment was abolished by act of June 30, 1914.<sup>60</sup> A provision in the naval appropriation act of

<sup>58</sup> Navy Department, Annual reports, 1909, 9-10.

<sup>57</sup> *Ibid.*, 10.

<sup>58</sup> 35 Stat. L., 184, 218.

<sup>59</sup> Checklist, 698, 773, 781.

<sup>60</sup> *Ibid.*, 703n, 714n, 764, 774n; Navy Department, Annual reports, 1909, 7; 61 Cong. 3 sess. (1910-11), H. ex. doc. 1231; 36 Stat. L., 605, 613; 38 Stat. L., 392, 408. Beginning in 1898, the Nautical Almanac Office had been administered by departmental regulations as a part of the Naval Observatory, although the office continued to be provided for separately in subsequent appropriation acts.—Cf. Checklist, 764.

March 4, 1911, for "salaries of the necessary clerical force and office expenses in the Navy Department," to perform the administrative duties connected with the Naval Militia, resulted in the creation of an Office of Naval Militia, in charge of a naval officer, subject to the supervision of the Aid for Personnel.<sup>61</sup>

**Changes Introduced by Secretary Daniels.** Commenting upon the reorganization of the department effected in 1909, Secretary Meyer, in his annual report for 1910, said: ". . . The business of the department has been expedited and the Secretary is better informed on the workings of the department than has been possible under any previous system. . . . As the usefulness of the aids has been so thoroughly demonstrated, it is proper to go even further, and it is recommended that the position of the aids be established by appropriate legislation, so that the organization would be a permanent one." Congress, however, failed to act upon this recommendation. Several changes were introduced in the system of naval aids by Secretary Daniels, who succeeded Secretary Meyer on March 5, 1913. The Personnel and Inspection divisions were discontinued in 1914, but a Division of Education and a Marine Corps Division were created, with a naval officer at the head of each.<sup>62</sup>

**Office of Chief of Naval Operations; Advisory Council.** The outbreak of the European War in 1914, involving naval operations on a vast scale, served to awaken interest in the United States in adequate preparation for naval defense and to emphasize the importance of an efficient system of naval administration. Congress, urged by manifestations of public sentiment, began the formulation of a program of constructive legislation with respect to the navy and the Navy Department. A provision of far-reaching importance was inserted in the naval appropriation act of March 3, 1915, which authorized the appointment of a naval officer by the President, with the consent of the Senate, as a Chief of Naval Operations, who should, under the direction of the Secretary of the Navy, "be charged with the operations of the fleet, and with the preparation and readiness of plans for its use in war."<sup>63</sup>

<sup>61</sup> *Ibid.*, 698n; 36 Stat. L., 1265, 1272.

<sup>62</sup> Navy Department, Annual reports, 1910, 5-8; Congressional directory (May, 1914), 264; (December, 1914), 262-63.

<sup>63</sup> 38 Stat. L., 928, 929.

The creation of the office of Chief of Naval Operations resulted in the abolition of the system of aids. According to Secretary Daniels, that system had brought into the Navy Department, in many instances, a duplication of work, and had tended to multiply correspondence between the bureaus and offices in the department. An Advisory Council was also established in the department, composed of the Secretary, the Assistant Secretary, the Chief of Naval Operations, the seven bureau chiefs, the Judge Advocate General, and the Major General Commandant of the Marine Corps. "The result of this reorganization," declared the Secretary, "has been the using to better purpose of all existing departmental machinery while securing the maximum of coöperation between its constituent units."<sup>64</sup>

The naval appropriation act of August 29, 1916, gave to the office of Chief of Naval Operations a more definite status. That act provided that the Chief of Naval Operations should have the rank and title of Admiral, to take rank next after the Admiral of the Navy, and that all orders issued by him should be considered as emanating from the Secretary, and should have full force and effect as such. The act further provided that, to assist the Chief of Naval Operations in the performance of his duties, there should be assigned for duty in his office not less than fifteen officers of and above the rank of lieutenant commander of the navy or major of the Marine Corps. Commenting upon the establishment of the office of Chief of Naval Operations in his annual report for 1916, Secretary Daniels said: "While civilian control, the essential in a Republic, has been preserved, responsibility has been placed upon the Chief of Naval Operations and the chiefs of the bureaus. Experience of a year and a half of earnest coöperation, without the semblance of friction, has demonstrated the wisdom of this new organization in the department."<sup>65</sup>

**Radio Service; Division of Naval Militia Affairs; Naval Militia Board.** The organization of the Office of Naval Operations effected upon its establishment in 1915 included, in addition to two principal assistants on operations and matériel, the Communication Office, the Office of Naval Intelligence, the Office of Target Prac-

<sup>64</sup> Navy Department, Annual reports, 1915, 9-11.

<sup>65</sup> 39 Stat. L., 556, 558; Navy Department, Annual reports, 1916, 5.

tice and Engineering Competitions, the Radio Service, the Office of Naval Aeronautics, and the Division of Naval Militia Affairs. The Radio Service, as first organized by Navy Department Order No. 240, November 9, 1912, in charge of a Superintendent, was placed under the supervision of the Bureau of Navigation, but was transferred to the Office of Naval Operations upon the establishment of that office in 1915. The Division of Naval Militia Affairs was also transferred from the Bureau of Navigation. It was first organized by General Order No. 93, April 12, 1914, pursuant to an act of February 16, 1914. This act also provided for a Naval Militia Board, composed of officers in the Naval Militia, appointed by the Secretary of the Navy, which should meet from time to time, at the call of the Secretary, for consultation with the Navy Department respecting the condition, status, and needs of that branch of the Naval Establishment.<sup>66</sup>

**Naval Consulting Board.** A Naval Consulting Board was organized by order of Secretary Daniels on October 7, 1915, with Mr. Thomas A. Edison as President, which was attached to the office of the Secretary of the Navy in an advisory capacity. The Secretary used his influence and prestige to bring about coöperation between the bureaus of the Navy Department and the inventive, scientific, and engineering talent as represented on and by this board. The Naval Consulting Board was given statutory recognition in the naval appropriation act of August 29, 1916.<sup>67</sup>

**Naval Research Laboratory.** One of the first recommendations of the Naval Consulting Board was directed toward the establishment, at the earliest opportunity, of a well-equipped and centralized laboratory for experimental and research work on problems peculiar to the navy. In accordance with this suggestion, Congress authorized an appropriation of \$1,000,000 by act of August 29, 1916, and an additional sum of \$500,000 by act of March 4, 1917, for the construction, equipment, and operation of such a laboratory. Before a proper site could be selected and building plans prepared, however, war was declared and, in view

<sup>66</sup> Congressional directory (December, 1915), 236-37, 285; Navy Department, Annual reports, 1913, 124; 1914, 195; 38 Stat. L., 283, 288.

<sup>67</sup> Scott, The naval consulting board of the United States, 10 *et seq.* (1920); 39 Stat. L., 556, 558.

of the urgent necessity for labor and matériel in war construction, the erection of buildings was postponed.<sup>68</sup>

**Changes in Office of Naval Operations.** Several changes in the Office of Naval Operations were effected prior to the declaration of war with Germany. The office of Director of Naval Aeronautics was discontinued in 1916, but the Chief of Naval Operations continued to exercise supervisory authority over matters pertaining to the operation of naval aircraft and aircraft stations, and an Aviation Section in his office was created in 1917.<sup>69</sup> The title of the Radio Service was changed to the Naval Communication Service, and the Communication Office, which handled all the dispatch work of the department, was merged with this service, under the supervision of a Director of Naval Communication.<sup>70</sup> The title of the Office of Target Practice and Engineering Competitions was changed to the Office of Gunnery Exercises and Engineering Performances, and the Division of Militia Affairs was given the status of a separate subdivision in the department, with its chief reporting direct to the Secretary of the Navy.<sup>71</sup> Following the death of Admiral Dewey in January, 1917, the office of Admiral was discontinued, but a naval officer designated as Aid to the Admiral was detailed in the immediate office of the Chief of Naval Operations.<sup>72</sup>

**Navy Department during the World War.** In direct contrast to the organization of the War Department during the period of the participation of the United States in the World War, only a comparatively small number of new administrative agencies were created in the Navy Department. While the problems of naval administration did not reach the degree of complexity and magni-

<sup>68</sup> 39 Stat. L., 556, 570; 1168, 1179; Navy Department, Annual reports, 1920, 64-66. A site was selected at Bellevue, D. C., and a contract awarded for the construction of the buildings in 1920. The laboratory has now been completed and equipped, but its operation has been prevented because of lack of funds. Cf. *Ibid.*, 1922, 30.

<sup>69</sup> Congressional directory (May, 1916), 263, 311; (December, 1917), 306.

<sup>70</sup> *Ibid.* (December, 1916), 312, 313; Navy Department, Annual reports, 1916, 143.

<sup>71</sup> Congressional directory (December, 1916), 312, 314; Navy Department, Annual reports, 1916, 77.

<sup>72</sup> Navy Department, Annual reports, 1917, 77; Congressional directory (December, 1917), 262.

tude of those which confronted the War Department, yet the fact that the administrative organization of the Navy Department proved to be capable of almost unlimited expansion, without serious modification during a period of emergency, is a remarkable testimony to the soundness of the basic principles upon which that organization was grounded. Secretary Daniels, in his annual report for 1917, commented on this subject as follows: "In its work since the War began the department has not been hampered by the necessity of any modification of its organization in passing from a peace basis to a war basis. . . . Every new expansion and activity was placed readily and naturally with an existing bureau or office of the department, and, as far as its organization is concerned, the difficulties that have faced the Navy Department as regards the Navy proper have been those of expansion and not of reorganization."<sup>73</sup>

**Coast Guard and Vessels of Lighthouse Service and Coast and Geodetic Survey Transferred to Navy.** Some few changes were introduced during the war period, however, which deserve mention here. Upon the declaration of the war, the Coast Guard Service of the Treasury Department was transferred to the Navy Department by Executive order of April 7, 1917, issued pursuant to the act of January 28, 1915, creating that service.<sup>74</sup> An Executive order of April 4, 1917, issued under authority of the naval appropriation act approved August 29, 1916, transferred from the Department of Commerce to the Department of the Navy a number of the tenders, light stations and vessels, together with their crews, belonging to the Lighthouse Service, while an order of September 24, 1917, issued pursuant to an act of May 22, 1917, transferred three steamers, their officers and crews, and a large portion of the office force of the Coast and Geodetic Survey from the Department of Commerce to the Navy Department.<sup>75</sup> The Coast Guard was returned to the Treasury Department by Executive order dated August 18, 1919, and the personnel and matériel belonging to the Coast and Geodetic Survey and the Lighthouse

<sup>73</sup> Navy Department, Annual reports, 1917, 3.

<sup>74</sup> Official Bulletin No. 1 (May 10, 1917), 6; 38 Stat. L., 800.

<sup>75</sup> Official Bulletin No. 2 (May 11, 1917), 3; No. 273 (April 2, 1918), 14; 39 Stat. L., 556, 602; 40 Stat. L., 84, 87.

Service were also returned to the Department of Commerce on April 1, 1919, and July 1, 1919, respectively.<sup>78</sup>

**Compensation Board; Director of Naval Aviation; Naval Reserve Force Division.** The impossibility of making fixed-priced contracts with shipbuilders during the war led Congress to authorize, in the naval appropriation act of August 29, 1916, the awarding of contracts for battle cruisers on a cost-plus profit basis. A Compensation Board was organized on March 22, 1917, by the Secretary of the Navy, which was charged with the supervision of all cost-plus contracts. The board has continued, since its organization, as a distinct administrative agency in the Navy Department.<sup>77</sup> In 1918, the Aviation Section of the Office of Naval Operations was given the status of a separate division of that office, in charge of a Director of Naval Aviation.<sup>78</sup> The naval appropriation act of July 1, 1918, provided for the transfer of the clerical force of the Division of Naval Militia Affairs to the Bureau of Navigation, which bureau was charged with the formation of the Naval Reserve Force and all matters relating thereto. A Naval Reserve Force Division was organized in the Bureau of Navigation in September, 1919.<sup>79</sup>

**Historical Section.** At the close of the World War, a Historical Section was organized in the Navy Department, specifically charged with the collection and classification of the naval records of the war, with a view to publication, and the acquirement of books, periodicals, photographs, maps, and other publications, documents, and pictorial records of the Navy relating to the war. A series of monographs was begun setting forth some of the principal activities of the navy.<sup>80</sup>

**Reorganization of Office of Naval Operations.** A thorough reorganization of the Office of Naval Operations was effected during the latter part of 1919. In addition to an Aid to the Admiral, an

<sup>78</sup> Navy Department, Annual reports, 1919, 144; Department of Commerce, Annual reports, 1919, 161, 173.

<sup>77</sup> Navy Department, Annual reports, 1920, 149; Congressional directory (December, 1921), 280.

<sup>78</sup> Congressional directory (April, 1918), 263.

<sup>79</sup> 40 Stat. L., 704, 712; Navy Department, Annual reports, 1920, 561.

<sup>80</sup> Secretary of the Navy, Annual report, 1919, 143; 1920, 157; 1922, 37.

Assistant Chief of Naval Operations and a Chief Clerk in the immediate office of the Chief of Naval Operations, nine divisions were created, namely, Planning, Operating Forces, Intelligence, Communication, Matériel, Naval Districts, Inspection, Gunnery Exercises and Engineering Performances, and Files and Records. Of these nine divisions, only two were set up by statutory authority, namely, Intelligence and Naval Communication. The Planning Division included a Director of Submarines and a Director of Naval Aviation.<sup>81</sup> The naval appropriation act of June 4, 1920, changed the title of the Bureau of Steam Engineering to the Bureau of Engineering.<sup>82</sup>

**Naval Aids; Submarine Division; Bureau of Aeronautics; Solicitor's Office Merged with Judge Advocate General's Office.** Secretary Denby, who succeeded Secretary Daniels on March 5, 1921, introduced a number of changes in the organization of the Navy Department. A partial return to the system of aids first introduced by Secretary Meyer in 1909 was effected by the detail of naval officers as Naval Aid to the Secretary, Aid to the Assistant Secretary, Aid for Navy Yards, and an officer of the Marine Corps as Marine Aid to the Secretary. A Submarine Division has been created in the Office of Naval Operations, in charge of a Director of Submarines. A separate Bureau of Aeronautics was established in the department on September 1, 1921, in accordance with Section 8 of the naval appropriation act, approved July 12, 1921, and on the same date the personnel and duties of the Office of Solicitor were transferred to the Judge Advocate General's Office.<sup>83</sup>

**Navy Yard Division.** The departmental administration of navy yards and naval stations was consolidated by General Order No. 68, issued on September 6, 1921, which created a Navy Yard Division in the office of the Secretary of the Navy, in charge of an Aid for Navy Yards, subject to the direction of the Assistant Secretary. This office also functions as a division common to the various bureaus and offices of the Navy Department in the discharge of

<sup>81</sup> Congressional directory (December, 1919), 326-27.

<sup>82</sup> 41 Stat. L., 812, 828.

<sup>83</sup> Congressional directory (December, 1921), 277, 333; Secretary of the Navy, Annual report, 1921, 13, 59; 42 Stat. L., 122, 140.

duties consolidated therein. The necessary officer and civilian personnel for the new division was furnished by the several bureaus and offices concerned. Prior to the creation of the Navy Yard Division in the Secretary's Office there had been no adequate single departmental agency for the administration of navy yards and stations.<sup>84</sup>

**Comparison of Organization with that of War Department.** In concluding this survey of the development of administrative organization in the Navy Department, it may be of value to compare, briefly, the existing arrangements in that department with the present organization of the War Department. Former Secretary of the Navy Daniels, in his last annual report, dated December 1, 1920, devoted considerable attention to the Navy Department organization, in which he took issue with those who would introduce the general staff system in that department. Secretary Daniels' opposition to this proposal was based on two main contentions: (1) That the inevitable result of the introduction of the general staff system would be the substitution of military for civilian control—a condition which would be out of harmony with the genius of American institutions; and (2) that the general staff organization could not and would not work side by side with anything approaching the existing bureau system of the Navy Department.<sup>85</sup>

With respect to the first of these contentions, it would seem that the experience of the War Department under the general staff organization fails to support such a conclusion. Its introduction in 1903 came largely as the result of the recommendations of Secretary Root, and successive civilian Secretaries have repeatedly testified to the efficiency of that arrangement. Furthermore, the Chief of Staff, as the military adviser of the Secretary of War, can hardly be said to occupy a more influential position with respect to military policy and operations than does the Chief of Naval Operations, who is charged by law, under the direction of the Secretary of the Navy, with the "operation of the fleet and the preparation and readiness of plans for its use in war." As ranking Admiral of the Navy, since the death of Admiral Dewey and the retirement of Admiral Badger, he is the *ex officio* President of the General Board

<sup>84</sup> Secretary of the Navy, Annual report, 1922, 23.

<sup>85</sup> Navy Department, Annual reports, 1920, 199 *et seq.*

of the Navy Department, which permits him to exercise considerable influence in the formulation of broad naval policies. He directs the work of the Naval Intelligence Office, the function of which corresponds to that of the Military Intelligence Division of the General Staff. He also directs the conduct of the Naval War College and the Planning Division in his own immediate office, the work of which is similar to that performed by the War Plans Division of the General Staff. The Operating Forces Division in the Office of Naval Operations corresponds broadly to the Operations and Training Division of the General Staff. In only one essential respect does his authority fall short of that possessed by the Chief of Staff, namely, in the production of matériel and the procurement of supplies. His lack of administrative control over the work of the bureaus concerned with these matters was particularly emphasized by Secretary Daniels as a most desirable characteristic of the organization of the Navy Department.

This leads us to the consideration of Secretary Daniels' second contention, namely, that the General Staff organization would be incompatible with the present bureau system in the Navy Department. This argument is supported, to some extent, by the experience of the War Department. "There is not room for both," he declared, "because either the bureau chief (with responsibility) or the super-chief (with authority) will agree on all matters of importance—in which event one of them is plainly in excess, or they will disagree—in which event the situation is sure to become strained and lost motion, if not maladministration, is bound to result." It was to correct this latter situation, as has been pointed out, that Congress, in the National Defense Act of 1916, forbade the members of the General Staff to assume or engage in work of an administrative character pertaining to the established bureaus or offices of the War Department. The interpretation placed upon this act by the Secretary, however, had the effect of virtually nullifying its provisions, and the subsequent changes introduced in the War Department under the Overman Act actually placed the members of the General Staff in charge of administrative services. The organization of the War Department under the National Defense Act of 1920 largely restores administrative control over the work of the bureaus to their respective chiefs, subject to the supervision of the General Staff.

With respect to the matter of personnel, for example, which is the sole concern of the Bureau of Navigation in the Navy Department, the value of interposing a general staff officer between the responsible chief of the bureau and the Secretary of the Navy may be seriously questioned. This is not the case, however, with respect to the production of matériel and the procurement of supply, which, in the Navy Department, is the concern of several bureaus. Here there is need for coördination, which is admirably obtained in the War Department through the Supply Division of the General Staff and the definite responsibility placed upon the Assistant Secretary of War. Such coördination is partially secured in the Navy Department through its council of bureau chiefs, but there is lacking, in that organization, any officer with superior and commanding authority to make decisions in the event of disagreement.

Without further comment upon the relative merits and disadvantages of the general staff system, it would appear that the recognized efficiency of naval administration during the recent period of emergency, under the existing organization of the Navy Department, places the burden of proof upon those who would substitute the general staff system for the present organization in the department, including, as it does, a General Board to advise the Secretary on subjects of broad naval policy, a Navy Department Council for the joint consideration of questions affecting the naval establishment, a Chief of Naval Operations in charge of the operation of the fleet and the preparation and readiness of war plans, administrative bureaus in charge of responsible chiefs, chosen because of their fitness for special administrative duties, and above all, a civilian Secretary, exercising complete authority over the entire naval establishment, and immediately responsible to the President, as Commander-in-Chief of the armed forces of the nation.

## CHAPTER XV

### THE DEPARTMENT OF JUSTICE

**Development After the Civil War.** The organization of the Attorney General's Office remained unchanged until the close of the Civil War, in spite of the fact that numerous and important legal problems arising out of the war added greatly to the work of that office. An act of March 3, 1865, reorganizing the clerical force in the Attorney General's Office, authorized the appointment of a chief clerk, a pardon clerk, an opinion clerk, and three other clerks, in addition to such temporary clerks as might be needed from time to time. The legislative, executive, and judicial appropriation act of July 23, 1866, authorized the appointment, by the Attorney General, of a law clerk in his office.<sup>1</sup> An act of June 25, 1868, directing the Attorney General to prosecute all suits in the Court of Claims on behalf of the United States, abolished the offices of Assistant Attorney General and of the Solicitor, Assistant Solicitor, and Deputy Solicitor of the Court of Claims. In lieu of these offices, the act authorized the appointment by the President, with the consent of the Senate, of two Assistant Attorneys General. The Attorney General was also authorized to appoint three additional clerks in his office.<sup>2</sup>

**Proposals for a Department of Justice.** In response to a Senate resolution of December 16, 1867, with respect to the organization of his office, Attorney General Stanbery submitted a brief report in which he pointed out that, although the force in his office was sufficient for mere administrative business, it was not capable of furnishing assistance to the Attorney General in the preparation and argument of cases before the Supreme Court and in the preparation of opinions on questions of law referred to him. He

<sup>1</sup> 13 Stat. L., 516; 14 Stat. L., 191, 207.

<sup>2</sup> 15 Stat. L., 75. The office of Solicitor of Claims was created by act of February 24, 1855, establishing a Court of Claims, and the offices of Assistant Solicitor and Deputy Solicitor, by act of August 6, 1856.—10 Stat. L., 612; 11 Stat. L., 30.

suggested that this assistance could be best supplied by the appointment of a Solicitor General. The creation of such an office, he declared, would obviate, in large measure, the necessity of employing special counsel in arguing cases before the Supreme Court, the average annual cost of which would constitute a salary sufficient to command the services of a competent lawyer. Concluding, he said: ". . . In my opinion the various law offices now attached to the other departments and the Court of Claims, might, with advantage to the public service, be transferred to the Attorney General's Office, so that it may be made the law department of the government, and thereby secure uniformity of decision, of superintendence, and of official responsibility."<sup>3</sup>

Legislative effort looking toward the consolidation of all the law offices of the government at Washington into one department, as recommended by Attorney General Stanbery, had its inception in the adoption of a resolution in the House of Representatives on December 12, 1867, directing the Committee on Judiciary to inquire into the expediency of providing by law that solicitors of departments and other law officers should all constitute a part of the Attorney General's department. The report of the committee on this resolution, however, was never called for by the House. Three resolutions were submitted to the House on February 11, 1868, and adopted, which called upon the Secretary of War, the Secretary of State, and the Attorney General to report to the House the amount expended since 1860 for the employment of private legal aid. Section 2 of a bill introduced in the House on April 9, 1869, providing for the publication of the opinions of the Attorneys General and for other purposes, authorized the appointment by the Attorney General, in lieu of the three clerks allowed in the act of June 25, 1868, of two persons learned in the law, to be called Solicitors of the United States, who should assist the Attorney General in the prosecution of suits before the Court of Claims. This section of the bill, however, was later stricken out by the Senate.<sup>4</sup>

<sup>3</sup> 40 Cong. 2 sess. (1867-68), S. ex. doc. 13, 2; 40 Cong. 2 sess., Congressional Globe, 196, 309.

<sup>4</sup> 40 Cong. 2 sess., Congressional Globe, 153, 1116; 41 Cong. 1 sess. (1869). *Ibid.*, 680, 771.

These scattered inquiries and proposals with respect to the Attorney General's Office, and the legal work of the government, were supplemented by an investigation conducted by the Joint Committee on Retrenchment appointed by Congress in 1867 to investigate and report upon measures for the reduction of public expenditures. The committee was led to an investigation of this subject because of the large expenditure of public funds, especially during the war period, for the employment of additional legal counsel by the Attorney General and the heads of the various departments. As a result of their investigation, the committee reported a bill to the House on February 25, 1870, for the establishment of a Department of Justice.<sup>5</sup> The bill was recommitted and again reported favorably to the House on April 26, 1870. Immediate consideration was given the bill in the House, and it was passed by that body on April 28, 1870. It passed the Senate on June 16, 1870, and was approved six days later.<sup>6</sup>

**Organization of Department of Justice, 1870.** The act of June 22, 1870, establishing the Department of Justice, provided that the Attorney General should be the head of the department, with duties, salary, and tenure of office as already fixed by law. It authorized the appointment of a Solicitor General, who should exercise all the powers of the Attorney General in case of a vacancy in that office, or during the absence or disability of the Attorney General, and two Assistant Attorneys General. The several law officers of the executive departments, namely, the Solicitor of the Treasury, the Solicitor of Internal Revenue, the Solicitor and Naval Judge Advocate General (name changed to Naval Solicitor), and the Examiner of Claims in the Department of State were transferred to the Department of Justice, and were required to exercise their

<sup>5</sup> 41 Cong. 2 sess. (1869-70), Congressional Globe, 1568. It was explained in the House, during the debate on the bill, that the reason why the committee had reported it "earlier than any other relating to the organization of the Departments is the great expense the government have been put to in the conduct of the numerous litigations involving titles to property worth millions of dollars, rights to personal liberty, and all the numerous litigations which can arise under the law of war."—*Ibid.*, 3035.

<sup>6</sup> *Ibid.*, 3034, 3067, 4490. Those supporting the bill particularly emphasized the desirability of subordinating all of the law officers of the government to one head, thereby introducing unity of decision and avoiding the possibility of contradictory opinions.

functions under the supervision and control of the Attorney General. The Attorney General was authorized to employ a stenographic clerk and three additional clerks, one of whom should be designated as disbursing clerk.<sup>7</sup>

**Supervision of Penal Institutions; Assistant Attorneys General; Examiner of Titles; General Agent.** The development of administrative organization in the Department of Justice since its establishment in 1870 has been characterized by successive additions to its personnel by acts of Congress, and the creation of new bureaus and divisions. The department has not been subjected to any thorough reorganizations until within recent years. An act of January 10, 1871, authorizing the Attorney General to prescribe rules and regulations for the government of certain territorial penitentiaries was the first of a series of enactments, whereby Congress has vested the control of United States penal institutions in that officer.<sup>8</sup> The appointment of an additional Assistant Attorney General was authorized by act of February 25, 1871, who was assigned to the Interior Department, and the act of June 8, 1872, authorized the appointment, by the Postmaster General, of an Assistant Attorney General for the Post Office Department.<sup>9</sup> The legislative, executive, and judicial appropriation act of March 3, 1873, made provision for a "law clerk, acting as examiner of titles," which office was permanently established by the Revised Statutes in 1874.<sup>10</sup> The sundry civil appropriation act approved on the same date included a sum to be expended under the direction

<sup>7</sup> 16 Stat. L., 162.

<sup>8</sup> 16 Stat. L., 398. Under this category may be mentioned the penitentiary located on McNeil Island, which, although erected under the direction of the Secretary of the Interior, was placed under the management and control of the Attorney General in 1871; the National Training School for Boys and the Jail of the District of Columbia, transferred from the jurisdiction of the Department of the Interior to the Department of Justice in 1872; the National Training School for Girls, established in 1888; the penitentiary at Fort Leavenworth, established in 1895; and the penitentiary at Atlanta, established in 1899.—14 Stat. L., 377; 17 Stat. L., 35; 19 Stat. L., 49; 25 Stat. L., 245; 26 Stat. L., 839; 28 Stat. L., 910, 957; 30 Stat. L., 1113.

<sup>9</sup> 16 Stat. L., 432; 17 Stat. L., 283, 284. The office of Assistant Attorney General for the Post Office Department, although appropriated for under the Department of Justice, is in reality an office in the Post Office Department, under the supervision of the Postmaster General. Cf. Easby-Smith, *The department of justice—its history and functions*, 29 (1904).

<sup>10</sup> 17 Stat. L., 485, 508; Revised Statutes, 60.

of the Attorney General in the detection and prosecution of crimes. Under this appropriation, the Attorney General employed an officer designated as an agent or special agent, and later as the General Agent, who was primarily charged with the conduct of investigations under the direction of the Attorney General. He was later given supervision over all matters relating to United States prisons, and the examination of the accounts of United States attorneys, marshals, clerks of courts, and commissioners.<sup>11</sup> Specific provision was made in an act of August 5, 1882, for assistant attorneys and clerks in the Department of Justice theretofore paid out of the several lump sum appropriations for "defending suits in claims against the United States," for the "detection and prosecution of crimes," and for "the support of convicts."<sup>12</sup>

**Bureau of French Spoliation Claims; Two Additional Assistant Attorneys General; Solicitor for the Department of State; Attorney in Charge of Pardons.** A Bureau of French Spoliation Claims was established in the Department of Justice in 1885 to have charge of questions and cases arising out of claims presented against the United States under the act of January 20, 1885, known as the "French Spoliation Act."<sup>13</sup> Provision for an additional Assistant Attorney General to be appointed by the President, with the consent of the Senate, was made in an appropriation act of July 11, 1890.<sup>14</sup> An act of March 3, 1891, providing for the adjudication of claims arising from Indian depredations, authorized the appointment of an additional Assistant Attorney General, who was charged with the defense of such cases on behalf of the United States.<sup>15</sup> The title of Examiner of Claims was changed to the Solicitor for the Department of State, and the office of Attorney in Charge of Pardons was created by act approved March 3, 1891.<sup>16</sup>

**Division of Accounts; Appointment Clerk; Commission to Codify Criminal Laws.** The Dockery Act of 1894, reorganizing the accounting and auditing system of the national government,

<sup>11</sup> 17 Stat. L., 510, 512; Easby-Smith, *op. cit.*, 33.

<sup>12</sup> 22 Stat. L., 219, 253.

<sup>13</sup> 23 Stat. L., 283; Easby-Smith, *op. cit.*, 41.

<sup>14</sup> 26 Stat. L., 228, 265.

<sup>15</sup> 26 Stat. L., 851, 854.

<sup>16</sup> 26 Stat. L., 908, 945, 946.

provided for the examination of the accounts of district attorneys, marshals, clerks, commissioners, and other officers of the courts of the United States, under the supervision of the Attorney General, before their transmission to the Treasury Department. For the conduct of this administrative audit, a Division of Accounts was established in the Department of Justice.<sup>17</sup> Matters relating to appointments in the Department of Justice, which had theretofore been performed by the clerk in charge of disbursements, were placed under the supervision of a clerk designated for that work on January 1, 1897.<sup>18</sup> An act approved June 4, 1897, authorized the President, with the consent of the Senate, to appoint three commissioners, whose duty it should be, under the direction of the Attorney General, to revise and codify the criminal and penal laws of the United States. The duties of the commission were extended by subsequent acts to include the revision of laws concerning the jurisdiction and practice of the United States courts, and later the revision of all laws of a permanent and general nature. The final report of the commission was submitted to Congress on December 15, 1906, in accordance with an act of June 30, 1906.<sup>19</sup>

**Private Secretary; Attorney in Charge of Dockets; Attorney General of Porto Rico; Assistant Attorney General for Spanish Treaty Claims.** The office of private secretary to the Attorney General was created by act of March 15, 1898, and that of Assistant Attorney in Charge of Dockets by act of February 24, 1890.<sup>20</sup> The organic act of April 12, 1900, providing temporarily for the revenues and civil government of Porto Rico, directed that the annual report of the Attorney General of Porto Rico should be submitted to the Department of Justice. By Executive order No. 1110, dated July 15, 1909, and issued in accordance with an act of July 15, 1909, the business of the civil government of Porto Rico

<sup>17</sup> 28 Stat. L., 162, 210; Easby-Smith, *op. cit.*, 34. Appropriation was voted in an act of February 26, 1896, for additional salary to the clerk in charge of accounts, and the office of Chief of Division of Accounts was given statutory recognition in the act of May 28, 1896.—29 Stat. L., 17, 24; 140, 176.

<sup>18</sup> Easby-Smith, *op. cit.*, 39.

<sup>19</sup> 30 Stat. L., 11, 58; 1074, 1116. 31 Stat. L., 1133, 1181; 34 Stat. L., 697, 754; Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 592, 1518.

<sup>20</sup> 30 Stat. L., 277, 313; 846, 886.

was assigned to the Bureau of Insular Affairs of the War Department, and, accordingly, the reports of the Attorney General of Porto Rico were thereafter submitted through the Governor of that Island to the Secretary of War.<sup>21</sup> An act of March 2, 1901, creating the Spanish Treaty Claims Commission provided for an Assistant Attorney General who should hold office during the existence of the commission. The commission was discontinued on May 2, 1910, on which date the office of the Assistant Attorney General for Spanish Treaty Claims expired.<sup>22</sup>

**Bureau of Insular and Territorial Affairs; Assistant Attorney General; Solicitor for Department of Commerce and Labor.** A Bureau of Insular and Territorial Affairs was established in the Department of Justice, under the direction of a Special Assistant Attorney General, in accordance with an act of February 14, 1902, which made appropriation to be expended, under the direction of the Attorney General, for the transaction of the business of the department growing out of insular and territorial possessions of the United States.<sup>23</sup> Specific provision was made in an appropriation act of February 25, 1903, for the offices of disbursing clerk and appointment clerk in the department, and the office of Assistant to the Attorney General was created by the deficiency appropriation act approved March 3, 1903. This latter officer was given charge of all suits and other matters arising under the federal anti-trust and interstate commerce laws. An additional Assistant Attorney General was also authorized by the act of March 3, 1903.<sup>24</sup> The appointment by the President, with the consent of the Senate, of a Solicitor for the Department of Commerce and Labor, was authorized by act of March 18, 1904.<sup>25</sup> The office of Special Assistant Attorney General was discontinued in accordance with a provision in the act of March 3, 1905, which directed that estimates under the appropriation for "insular and territorial affairs" should be submitted thereafter in detail under legislative, executive, and judicial expenses.<sup>26</sup>

<sup>21</sup> 31 Stat. L., 77, 82; 36 Stat. L., 11; Checklist, 1460.

<sup>22</sup> 31 Stat. L., 877, 878; Checklist, 598.

<sup>23</sup> 32 Stat. L., 5, 24; Easby-Smith, *op. cit.*, 40.

<sup>24</sup> 32 Stat. L., 854, 903; 1031, 1062; Easby-Smith, *op. cit.*, 28.

<sup>25</sup> 33 Stat. L., 85, 135.

<sup>26</sup> 33 Stat. L., 1156, 1206.

**Office of Solicitor of Customs; Assistant Attorney General in Charge of Customs.** The sundry civil appropriation act of June 30, 1906, empowered the Attorney General, at the request of the Secretary of the Treasury, to appoint a Solicitor of Customs and not to exceed three assistants, to protect the interests of the United States in all cases and matters before the Board of General Appraisers, and to conduct cases appealed from that board to the United States Courts, under the direction of the Attorney General. This act amended an act of March 2, 1895, which authorized the Attorney General to employ counsel, at the request of the Secretary of the Treasury, to protect the interests of the Treasury Department in cases before the Board of General Appraisers.<sup>27</sup> The office of Solicitor of Customs was subsequently abolished by act of August 5, 1909, which authorized the appointment by the President, with the consent of the Senate, of an Assistant Attorney General to have charge of the interests of the government in all matters of reappraisement and classification of imported goods and of all litigation incident thereto. The act further authorized the appointment, by the Attorney General, of a Deputy Assistant Attorney General and four attorneys to assist and act under the direction of the Assistant Attorney General authorized by this act.<sup>28</sup>

**Bureau of Investigation.** The Attorney General, in his annual report for 1907, called attention to the need for a special detective force in the department. The only response made by Congress to this recommendation was the provision in the act of May 27, 1908, prohibiting the further use, by the Department of Justice, of the secret service force in the Treasury Department. This practically forced the Department of Justice to organize its own detective corps without the express sanction of Congress. Accordingly, a Bureau of Investigation was established on July 1, 1908, under a Chief Examiner, which was charged with the investigation of the offices and records of United States court officers, and the direction of the work of a corps of traveling examiners and special agents. The work of the bureau was an enlargement of the investigations conducted, under the direction of the Attorney General, by the General Agent and his subordinates first appointed in 1873, and

<sup>27</sup> 34 Stat. L., 697, 763; 28 Stat. L., 843, 848.

<sup>28</sup> 36 Stat. L., 11, 108; Attorney General, Annual report, 1910, 396.

the expenditures for the bureau were paid out of the lump-sum appropriation for "the detection and prosecution of crimes."<sup>29</sup>

**Librarian; Superintendent of Prisons; Bureau of Criminal Identification.** Specific provision was made in the legislative, executive, and judicial appropriation act of February 26, 1907, for the office of Librarian, which office had been previously created by administrative order, and placed in charge of a law clerk in the department.<sup>30</sup> The office of Superintendent of Prisons was created by act of May 22, 1908, to which was transferred that portion of the work previously performed by the General Agent relating to United States prisons.<sup>31</sup> Criminal identification records, which, until 1907, were kept in each of the federal penitentiaries, and in that year were brought to the Department of Justice in Washington, were transferred to the penitentiary at Fort Leavenworth in 1908, and placed in charge of a special agent of the department, who was designated as the Special Agent in Charge of the Bureau of Criminal Identification. This bureau, which became a clearing house for the exchange of criminal records, was not a statutory service, but was maintained out of the lump-sum appropriation for the "inspection of prisons and prisoners."<sup>32</sup>

**Attorney in Charge of Titles; Public Lands Division; Special Commissioner for Suppression of White Slave Traffic; Parole Boards.** The office of Attorney in Charge of Titles was created by act of March 4, 1909, while the office of Assistant Attorney in Charge of Dockets was discontinued by the same act.<sup>33</sup> A Public Lands Division was organized by the Attorney General on November 16, 1909, in charge of a statutory attorney, to which was assigned the conduct of all suits and proceedings concerning the enforcement of the public land law.<sup>34</sup> For the enforcement of the White Slave Traffic Act, approved June 25, 1910, an officer was appointed by the Attorney General, with the title of Special Commissioner for the Suppression of the White Slave Traffic, who was

<sup>29</sup> 35 Stat. L., 317, 328; Attorney General, Annual report, 1907, 9; 1908, 7; 1909, 9.

<sup>30</sup> 34 Stat. L., 935, 986; Easby-Smith, *op. cit.*, 43.

<sup>31</sup> 35 Stat. L., 184, 236.

<sup>32</sup> Attorney General, Annual report, 1907, 44; 1908, 50; 1910, 254.

<sup>33</sup> 35 Stat. L., 845, 899.

<sup>34</sup> Attorney General, Annual report, 1910, 26.

placed in charge of that work. This office was consolidated with the Division of Investigation on January 1, 1914.<sup>35</sup> An act of June 25, 1910, providing for the parole of United States prisoners, directed that the Superintendent of Prisons of the Department of Justice, and the warden and physician of each United States penitentiary should constitute a board of parole for such prison. These boards were authorized to release United States prisoners on parole, with the approval of the Attorney General.<sup>36</sup>

**Bureau of Investigation Accorded Statutory Recognition; Office of Solicitor for Department of Labor; Offices of Solicitors for Department of the Interior and the Post Office Department.** The Bureau of Investigation, first established in 1908, was accorded statutory recognition in the act of March 4, 1911, which made provision for the office of Chief of Division of Investigation.<sup>37</sup> The act of March 4, 1913, creating the Department of Labor, provided for the office of Solicitor of the Department of Justice for the Department of Labor.<sup>38</sup> The title of Assistant Attorney General was changed to that of Solicitor for the Department of the Interior, and the title of Assistant Attorney General for the Post Office Department to that of Solicitor for the Post Office Department by act of July 16, 1914.<sup>39</sup>

**War Emergency Division; Administration of Legal Affairs Centralized in Department.** Shortly after the entrance of the United States into the World War, the Attorney General organized a special War Emergency Division, through which he supervised substantially all of the war activities of the department. These activities were, in the main, concerned with the enforcement of wartime legislation. The force of the department was augmented by the appointment of a large number of special agents for war work, and additional assistant attorneys and deputy marshals. An Executive order dated May 31, 1918, and issued under authority of

<sup>35</sup> 36 Stat. L., 825; Attorney General, Annual report, 1911, 48; 1913, 50; 1914, 45.

<sup>36</sup> 36 Stat. L., 819.

<sup>37</sup> 36 Stat. L., 1170, 1225.

<sup>38</sup> 37 Stat. L., 736, 738.

<sup>39</sup> 38 Stat. L., 454, 497.

the Overman Act of May 20, 1918, provided that all law officers of the government, excepting those in the Philippine Islands, including all law officers attached to any executive bureau, agency, or office specially created for the prosecution of the war, should exercise their functions under the supervision and control of the head of the Department of Justice, and that the opinions of the Attorney General upon questions of law arising in any department, executive bureau, agency, or office, should be treated as binding upon all departments, bureaus, agencies, or offices therewith concerned. The offices of the Judge Advocate General of the army and navy were specifically exempted from the provisions of this order. This executive action introduced unity of control in the administration of the legal affairs of the national government, and was effective in preventing serious confusion in policies, duplication of effort, and conflicting interpretations of the law.<sup>40</sup>

**Reorganization, 1919.** Attorney General Palmer, who assumed office on March 5, 1919, effected the first important reorganization of the Department of Justice since its establishment in 1870. The entire administrative duties of the department were placed under the supervision of the Chief Clerk, which included the Division of Accounts, and the Offices of the Appointment Clerk, the Disbursing Clerk, and the Librarian. At the suggestion of the Attorney General, the Chief Clerk was allowed additional compensation in the deficiency appropriation act of November 4, 1919, for his services as General Administrative Agent of the department. Under this reorganization one of the Assistant Attorneys General was given entire charge of the investigational duties of the department. The War Emergency Division was abolished, and the Bureau of Investigation placed under the control of a Director, subject to the immediate supervision of the Attorney General. The sundry civil appropriation bill of July 19, 1919, authorized the appointment of a Director of the Bureau of Investigation, to be paid out of the appropriation for the "detection and prosecution of crimes."

<sup>40</sup> Attorney General, Annual report, 1918, 14; 1919, 20; Official Bulletin No. 326 (June 4, 1918), 4.

A division to deal with radicalism was organized in that bureau on August 1, 1919.<sup>41</sup>

The various officers of the department were assigned as follows: the Assistant to the Attorney General in charge of the Anti-Trust Division; an Assistant Attorney General in charge of the Bureau for the Defense of Claims against the United States; an Assistant Attorney General in charge of the Criminal Division, acting in coöperation with the Bureau of Investigation; an Assistant Attorney General in charge of the Internal Revenue, Tax, Prohibition, and Miscellaneous Matters Division; an Assistant Attorney General in charge of the Public Lands Division; and an Assistant Attorney General in Charge of Customs. In addition to these bureaus and divisions, the offices of Attorney in Charge of Pardons and Attorney in Charge of Titles were retained, and that of Attorney in Charge of Land Litigation in the District of Columbia was created. The Superintendent of Prisons was given entire supervision over federal penitentiaries, training schools, and the Bureau of Criminal Identification.<sup>42</sup>

**Reorganization Plan Altered by Attorney General Daugherty, 1921.** The organization of the department, as thus effected by Attorney General Palmer in 1919, has been partially altered since the present incumbent, Mr. Daugherty, assumed office on March 5, 1921. An Assistant Attorney General has been placed in charge of all the administrative affairs of the department, assisted by the Chief Clerk and Administrative Assistant. The offices of Attorney in Charge of Titles and Attorney in Charge of Land Litigation in the District of Columbia have been combined into the office of the Attorney in Charge of Titles and Condemnations. A Division of Admiralty Litigation has been created in charge of an Assistant Attorney General, and the title of the Division of Internal Revenue, Tax, Prohibition, and Miscellaneous Matters changed to the Division of Taxation, Insurance, Prohibition, and Minor Regulations of Commerce. The Bureau of Investigation has been reorganized, under the supervision of a Director and an Assistant Director.

<sup>41</sup> Attorney General, Annual report, 1919, 6-7, 12, 21; 41 Stat. L., 163, 207; 327, 336.

<sup>42</sup> Attorney General, Annual report, 1919, 53 *et seq.*

It now includes three divisions, namely, General Intelligence, Theft and Fraud, and Violations of Miscellaneous Federal Statutes.<sup>42</sup>

**War Frauds Sections Created; Further Changes Proposed.** Acting upon the request of the Attorney General, Congress authorized a special appropriation by act of May 22, 1922, for the investigation and prosecution of frauds arising out of wartime contracts. In order that this work might be expeditiously and effectively carried on, a War Frauds Section was organized in the Department of Justice, under the immediate direction of the Attorney General.<sup>43</sup> Recent intimations of changes in the department include the establishment of a Federal Bureau of Criminal Investigation, which would enlarge the work of the existing Bureau of Criminal Identification, and a training school for government detectives in New York City, under the supervision of the Bureau of Investigation.<sup>44</sup>

**Ideal of Centralized Control over Legal Affairs Not Yet Realized.** The development of administrative organization in the Department of Justice since its establishment in 1870 has largely followed the ideas of the successive heads of that department, while Congress has been content to give legislative recognition to the bureaus, offices, and divisions thus established, through appropriation acts. As a result, departmental unity and flexibility of organization have been and still are outstanding characteristics of the organization of the department. Although the act of 1870 creating the Department of Justice purported to centralize all of the legal work of the government in one department, under the supervision of the Attorney General, that ideal has never been attained except during the World War, through the issuance of an Executive order under authority of the Overman Act. The legal work of the

<sup>42</sup> *Ibid.*, 1921, 18 *et seq.* The legislative, executive, and judicial appropriation act of March 3, 1921, continued the provision for the office of Chief of the Division of Investigation. That officer at present occupies the position of Assistant Director of the Bureau of Investigation, while provision for the office of Director continues to be made through the appropriation for the "detection and prosecution of crimes."—41 Stat. L., 1252, 1296; 1367, 1410; Congressional directory (December, 1921), 275.

<sup>43</sup> 42 Stat. L., 543; Attorney General, Annual report, 1922, 4.

<sup>44</sup> *Washington Post*, June 15, 1921; *New York Times*, September 11, 1921; November 14, 1921.

various independent or detached administrative agencies is not performed under the direction of the Attorney General, and only a nominal supervision is exercised by that officer over the work of the several department solicitors. Furthermore, the offices of the Judge Advocate General of the army and the navy, which perform the legal work of their respective departments, in addition to the conduct of court martial proceedings, are not subject to his supervision. While there is, no doubt, much to be said in favor of maintaining the existing control of the heads of the several departments over the conduct of the legal affairs of their respective departments, it would seem that a closer approximation to the ideal of centralized legal control through the Department of Justice might well be attained.

## CHAPTER XVI

### THE POST OFFICE DEPARTMENT

The organization of the Post Office Department in 1860 was substantially that which had been introduced in the department following the passage of the act of July 2, 1836, and this arrangement continued, except for the introduction of several new offices and divisions, until 1872. Furthermore, as was pointed out in a preceding chapter, that organization was the result of administrative action, and not of congressional enactment. Prior to 1860, Congress had made provision for the following officers in the department: Postmaster General, three Assistant Postmasters General, Chief Clerk, Disbursing Clerk, three principal clerks, and a clerk acting as topographer. The distribution of the duties of the department among these officers and the establishment of bureaus or divisions for the administration of those duties were matters which were left entirely to the discretion of the head of the department. During the period from 1861 to 1872, however, Congress exercised its authority to provide expressly for certain offices and divisions in the department, although the Postmaster General was still permitted to define the duties of the offices and divisions thus created.

**Superintendents of Money Order System, Foreign Mails, Blank Agency, Free Delivery, and Railway Mail Service; Chief of Dead Letter Office.** The act of May 17, 1864, to establish a postal money order system, provided for the appointment, by the Postmaster General, of a Superintendent of the Money Order System, who should be charged with the conduct of the business of the money order offices, and the keeping and settling of their accounts.<sup>1</sup> An act

<sup>1</sup> 13 Stat. L., 76, 79. The special purpose which led to the passage of this act establishing the money order system was the desire to accommodate soldiers who wished to send money to their homes. The creation of such a system, however, had been urged many years before for the purpose of freeing the mails from so-called "money" letters, which provoked theft and robbery. Cf. Roper, *The U. S. post office*, 73 (1917).

of March 3, 1865, relating to clerkships in the Post Office Department authorized the appointment of a chief clerk in the offices of each of the three Assistant Postmasters General.<sup>2</sup> Upon the express recommendation of the Postmaster General, definite provision was made in an act of July 27, 1868, for the appointment of a Superintendent of Foreign Mails in the department to have charge of the business of the foreign mail service, and a chief of division for the Dead-Letter Office in the Office of the Third Assistant Postmaster General. This act also provided for the establishment of a Blank Agency for the Post Office Department, to be located in Washington, and in charge of a Superintendent.<sup>3</sup> A Superintendent of Free Delivery was appointed on November 8, 1869, to supervise the free delivery service established by act of March 3, 1863. This office was not made a statutory one, however, until 1873.<sup>4</sup> A Division of Railway Mail Service was organized on April 4, 1869, in charge of a Superintendent. This service had been definitely established for the first time in 1865, although mail had been carried by railroads as early as 1835.<sup>5</sup>

**Reorganization, 1872.** In his annual report for 1868, Postmaster General Randall emphasized the need for a reorganization of the Post Office Department, as follows: "The rapid growth of the postal service of the United States since the present organization of the Post Office Department was established by the act of July 2, 1836, has devolved on its officers an amount of business so extensive, varied, and responsible a character, that a reorganization,

<sup>2</sup> 13 Stat. L., 515.

<sup>3</sup> 15 Stat. L., 194, 196; Postmaster General, Annual report, 1866, 15-16; 1868, 24. A Dead-Letter Office was first established in 1825, while the history of the foreign mail service dates back to 1789. Cf. Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 859; Postmaster General, Annual report, 1895, 448-56; Van Tyne and Leland, Guide to the archives of the government of the United States in Washington, 163 (1907).

<sup>4</sup> 12 Stat. L., 701, 703; Checklist, 871. Appropriation was made in the acts of March 3, 1873, and June 23, 1874, for a fourth class clerk to act as Superintendent of Free Delivery.—17 Stat. L., 556, 557; 18 Stat. L., 231.

<sup>5</sup> Van Tyne and Leland, *op. cit.*, 161-62; Parson, History of the railway mail service, 48 Cong. 2 sess. (1884-85), S. ex. doc. 40; Postmaster General, Annual report, 1869, 15. Two additional special agents to superintend postal matters connected with the railway mail service were authorized by act of March 3, 1865.—13 Stat. L., 504, 505.

wisely adapted to the present and prospective condition of the service, is necessary to secure the greatest practicable efficiency in its administration." This recommendation was concurred in by his successor, Mr. Creswell, and on June 8, 1872, an act was approved reorganizing the department.<sup>6</sup>

The act of 1872 provided for the establishment, at the seat of government of the United States, of a department to be known as the Post Office Department, the principal officers of which should be a Postmaster General and three Assistant Postmasters General, all of whom should be appointed by the President, with the advice and consent of the Senate. In addition to these principal officers, the act authorized the appointment, by the Postmaster General, of the following employees in that department; a Chief Clerk for the Postmaster General and each of the three Assistant Postmasters General; one Superintendent of Post Office Building and Disbursing Clerk; one Superintendent and one Chief Clerk of the Money Order System; one Superintendent and one Chief Clerk of foreign mails; one Topographer; one Assistant Attorney General; one Chief of the Division of Mail Depredations; one Chief of the Division of Dead Letters; one Superintendent, one Assistant Superintendent, and four assistants of the Blank Agency; a necessary number of special agents to conduct investigations; two agents to superintend the railway postal service; and a large number of clerks, messengers, and laborers. Provision was also made for the office of Auditor of the Treasury for the Post Office Department, with organization and duties similar to those first provided for that office in 1836.<sup>7</sup>

**Administrative Divisions and Offices Created, 1874-1878.** The provisions of the act of 1872 formed the basis for the organization of the Post Office Department for a period of about twenty years. New divisions and offices were created from time to time, however, both by legislative enactment and by administrative order. An act of June 20, 1874, made provision for a Chief of the Division of Postage Stamps, while the office of Chief of the Division of Inspec-

<sup>6</sup> Postmaster General, Annual report, 1868, 35-36; 1869, 38.

<sup>7</sup> 17 Stat. L., 283. Although designated as a "department" in this act, the term "executive department" was not used in connection with the Post Office until the revision of the statutes in 1874.—Revised Statutes, 64; Learned, The president's cabinet, 232 (1912).

tion was authorized by act of June 19, 1878. This latter act also made provision for an Appointment Clerk in the Postmaster General's Office, and a Law Clerk in the office of the Assistant Attorney General for the Post Office Department.<sup>8</sup> Divisions of Finance, Registered Letters, and Files, Records, and Mails, were organized, by departmental order, under the supervision of the Third Assistant Postmaster General, and a Division of Appointments was created in the office of the First Assistant Postmaster General.<sup>9</sup>

**Distribution of Duties Among Assistant Postmasters General.** Although the several Assistant Postmasters General had been definitely assigned by the Postmaster General to supervise the administration of certain matters in the department as early as 1836, such a distribution of the duties of the department did not receive statutory recognition until 1878. The legislative, executive, and judicial appropriation act of June 19, 1878, organized the offices of the Postmaster General and the Assistant Postmasters General as follows: Postmaster General's Office, including a Chief Clerk, Appointment Clerk, Law Clerk (office of Assistant Attorney General for the Post Office Department), and Topographer; First Assistant Postmaster General's Office, including a Chief Clerk, a Superintendent of the Blank Agency, and a Superintendent of Free Delivery; Second Assistant Postmaster General's Office, including a Chief Clerk and a Chief of the Division of Inspection; Third Assistant Postmaster General's Office, including a Chief Clerk, Chief of the Division of Dead Letters, and Chief of the Division of Postage Stamps; and the offices of Superintendent of Foreign Mails, Superintendent of the Money Order System, Chief of the Division of Depredations, and Disbursing Clerk.<sup>10</sup>

**Additional Offices and Divisions, 1879-1886.** The office of Superintendent of the Railway Mail Service, first established in 1869, was given statutory recognition in an act of March 3, 1879.<sup>11</sup> The office of Superintendent of Railway Adjustment was organized on June 28, 1880, in the Second Assistant Postmaster General's Office, appropriation therefor having been made in the act of June

<sup>8</sup> 18 Stat. L., 85, 106; 20 Stat. L., 178, 202.

<sup>9</sup> Postmaster General, Annual report, 1874, 44; 1876, 160; 1877, xviii.

<sup>10</sup> 20 Stat. L., 178, 201.

<sup>11</sup> 20 Stat. L., 355, 356.

15, 1880. The act of May 4, 1882, making appropriations for the service of the Post Office Department, authorized the appointment of a Chief Post Office Inspector, in the office of the Postmaster General. This officer was placed in charge of the Division of Mail Depredations, and the office of the Chief of that division abolished.<sup>12</sup> Provision was made in the legislative, executive, and judicial appropriation act of March 3, 1883, for two new divisions in the office of the First Assistant Postmaster General, namely, Salary and Allowance, and Appointment, while the title of the Blank Agency was changed to the Division of Post Office Supplies. A Division of Finance in the Third Assistant Postmaster General's Office was also authorized by this act.<sup>13</sup> The act of July 7, 1884, made provision for a Bond Division in the office of the First Assistant Postmaster General, upon the recommendation of that officer, and the act of July 27, 1886, detached the Dead-Letter Office from the Third Assistant Postmaster General's Office and established it as a separate agency in the department, in charge of a Superintendent, subject to the general supervision of the Postmaster General.<sup>14</sup>

**Office of Fourth Assistant Postmaster General; Reorganization of Department, 1891.** The ever-increasing volume of work performed by the Post Office Department made imperative a reorganization of that department. To effect such a reorganization and a redistribution of the duties of the department, the creation of the office of Fourth Assistant Postmaster General was recommended by Postmaster General Vilas in 1887, and by his successors Mr. Dickinson and Mr. Wanamaker. Dickinson desired that Congress should go even further and prescribe by statute the exact organization and distribution of the duties of the department.<sup>15</sup> In accor-

<sup>12</sup> 21 Stat. L., 210, 234; 22 Stat. L., 52, 53; 219, 252.

<sup>13</sup> 22 Stat. L., 531, 560. The changes introduced by this act in the office of the First Assistant Postmaster General had been proposed by that officer in his annual report for 1882. Cf. Postmaster General, Annual report, 1882, 37.

<sup>14</sup> 23 Stat. L., 159, 190; 24 Stat. L., 172, 206. Cf. Postmaster General, Annual report, 1882, 37; 1885, 62.

<sup>15</sup> Postmaster General, Annual report, 1887, 84; 1888, xxxix; 1889, 5. Mr. Dickinson, in an article written several months after he had retired from office, returned a severe indictment against the existing organization of the Post Office Department. He called attention to the fact that there

dance with these successive recommendations, provision was made in the act of March 3, 1891, for the office of Fourth Assistant Postmaster General.<sup>16</sup>

The act of 1891, however, did not undertake to redistribute the duties of the department, as recommended by Postmaster General Dickinson. Such a redistribution was effected through the issuance of a departmental order by Postmaster General Wanamaker, dated August 1, 1891. This order assigned to the First Assistant Postmaster General supervision over the Divisions of Salaries and Allowances, Supplies, and Correspondence, the Dead-Letter Office, and the offices of the Superintendent of Free Delivery and Superintendent of the Money Order System. The Second Assistant Postmaster General was placed in charge of contract and transportation management, including the Division of Inspection and the offices of Superintendent of the Railway Mail Service and Superintendent of Foreign Mails. The Divisions of Stamps, Finance, and Registration were placed under the jurisdiction of the Third Assistant Postmaster General, while those of Mail Depredations, Appointments, and Bonds were assigned to the Office of the Fourth Assistant Postmaster General. The offices of Topographer and Disbursing Clerk continued as separate agencies, under the general direction of the Postmaster General. Commenting upon the reorganization of the department under this order, the Postmaster General said: "The creation of the office of Fourth Assistant has permitted a thorough reorganization of the departmental forces to be made. The bureaus are doing better work because it is a special work, and the Postmaster General is able to do better work because it is special."<sup>17</sup> This distribution of the duties of the department

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had been no distribution of powers or redistribution of the functions of that department since 1836; that the statutes left the organization of the department and the distribution of its duties to be fixed by regulations and orders of the Postmaster General; and that officers and clerks in the department had been added from time to time who had no direct responsibility save to the head of the department. Concluding, he declared: "What is demanded, and what must speedily come, is a redistribution of the powers and responsibilities of the Post Office Establishment."—*Progress and the post, North American Review*, Vol. 149, 401-05 (October, 1889).

<sup>16</sup> 26 Stat. L., 908, 944.

<sup>17</sup> Postmaster General, Annual report, 1891, 9-10.

received statutory recognition in the legislative, executive, and judicial appropriation act of July 16, 1892.<sup>18</sup>

**New Divisions Established; Partial Redistribution of Duties Effected, 1900-1904.** The general organization of the department, as it was established in 1891, was not substantially altered until 1905, although several new divisions were created, beginning in 1900.<sup>19</sup> The appropriation act of April 17, 1900, made provision for a Contract Division and a Mail Equipment Division in the Office of the Second Assistant Postmaster General, while the Third Assistant Postmaster General's Office was enlarged by the establishment of a Classification Division and the Office of Superintendent of the Registry System.<sup>20</sup> The act of March 3, 1901, authorized the establishment of a Redemption Division and a Division of Files and Records in the Office of the Third Assistant, and the office of Superintendent of City Delivery Service in the Office of the First Assistant.<sup>21</sup> Upon recommendation of the First Assistant Postmaster General, whose office supervised the administration of the Rural Free Delivery Service, first instituted in 1890, that service was permanently organized by act of April 28, 1902,

<sup>18</sup> 27 Stat. L., 183, 218. The Inspection Division in the office of the Second Assistant Postmaster General was charged with enforcing the proper performance of mail service for which the department had contracted. The Division of Mail Depredations in the office of the Fourth Assistant, which later received the title of Division of Post Office Inspectors and Mail Depredations, was charged with the supervision and assignment to duty of all the inspectors employed in the postal service, the preparation and issue of all cases for investigations, and all matters relating to depredations upon the mails, foreign and domestic. Cf. Postmaster General, Annual report, 1893, 177. The Division of Correspondence, assigned to the office of the First Assistant, had formerly been located in the office of the Assistant Attorney General for the Post Office Department.—*Ibid.*, 1892, 171.

<sup>19</sup> A Curator of the Museum was first authorized by act of May 28, 1896; that institution having been, prior to that time, under the supervision of the Chief Clerk.—29 Stat. L., 140, 173. Cf. Postmaster General, Annual report, 1890, 43.

<sup>20</sup> 31 Stat. L., 86, 128. The work of the Division of Contracts had been performed in the office of the Second Assistant since the establishment of the latter in 1810, and the Second Assistant's Office was often referred to in the early reports of the Postmaster General as the Contract Office. The Registry System was first established by act of March 3, 1855.—10 Stat. L., 641, 642.

<sup>21</sup> 31 Stat. L., 960, 1003.

as a branch of the Office of the General Superintendent of Free Delivery.<sup>22</sup>

An appropriation act of February 25, 1903, changed the title of the Superintendent of Postage Stamps to the Superintendent of Postage Stamp Supplies and Postmasters' Accounts, to indicate the scope of the work performed in that office.<sup>23</sup> By order of the Postmaster General, dated May 9, 1903, the Free Delivery Division, which included the offices of the General Superintendent of Free Delivery, the Superintendents of City Free Delivery and Rural Free Delivery, and a clerk in charge of the Special Delivery Service, was transferred to the Office of the Fourth Assistant Postmaster General. The office of General Superintendent of Free Delivery was discontinued on May 27, 1903, and the two branches of City Free Delivery and Rural Free Delivery were organized as separate divisions, the former including the clerk in charge of Special Delivery.<sup>24</sup> The appointment by the President, with the consent of the Senate, of a Purchasing Agent for the Post Office Department was authorized by act of April 28, 1904, who should have supervision of the purchase of all supplies for the postal service, subject to the direction and control of the Postmaster General.<sup>25</sup>

**Reorganization of Department, 1905-1906.** A thorough reorganization and redistribution of the duties of the Post Office Department was effected on December 1, 1905, under authority of an order issued by Postmaster General Cortelyou on November 1, 1905. Mr. Cortelyou, in his annual report for 1905, emphasized what he termed the "unfortunate division of authority over certain intimately related branches of the service," under the existing

<sup>22</sup> Postmaster General, Annual report, 1901, 83; 1902, 110; 32 Stat. L., 120, 165. Experiments in village free delivery had first been instituted under the direction of the Postmaster General, in accordance with a joint resolution of Congress, approved October 1, 1890.—26 Stat. L., 686; Roper, *op. cit.*, 75.

<sup>23</sup> 32 Stat. L., 854, 901.

<sup>24</sup> Postmaster General, Annual report, 1903, 601; 1904, 576; Checklist, 871, 873. This arrangement was given statutory recognition in the act of March 18, 1904.—33 Stat. L., 85, 132. The Special Delivery Service was first established by act of March 3, 1885.—23 Stat. L., 385, 387. Cf. Roper, *op. cit.*, 75.

<sup>25</sup> 23 Stat. L., 429, 440; Postmaster General, Annual report, 1904, 646.

organization of the department, and which he sought to rectify by the rearrangement of the department. The following changes were introduced in the organization of the Post Office Department by the order of November 1, 1905: (1) All the inspection work of the department, except that performed by the Division of Inspection in the Office of the Second Assistant Postmaster General in connection with the performance of railway mail contracts, was consolidated under a Division of Post Office Inspectors and Mail Depredations in the Office of the Postmaster General and in charge of the Chief Post Office Inspector; (2) the Divisions of City Free Delivery, Appointments, and Bonds were transferred from the Office of the Fourth Assistant to that of the First Assistant; (3) the office of Topographer and the Divisions of Dead Letters and Supplies were transferred from the Postmaster General's Office and the Office of the First Assistant, respectively, to the Fourth Assistant Postmaster General's Office; (4) the Division of Money Orders was transferred from the Office of the First Assistant to the Third Assistant's Office; and (5) the Division of Files and Records in the Office of the Third Assistant was abolished, and its work and personnel transferred to the Chief Clerk's Office.<sup>26</sup>

The broad plan of the department, as organized under this order, gave to the Postmaster General the direction and supervision of the entire postal service; to the First Assistant, the control of Post Office personnel and management; to the Second Assistant, supervision over the transportation of mails; to the Third Assistant, the management of postal finance; and to the Fourth Assistant, the direction of rural free delivery and miscellaneous postal business. "Such branches of the department's work as are closely related," explained Postmaster General Cortelyou, "are brought together as parts of the same working organization, and their control and management placed under one responsible authority."<sup>27</sup> This arrangement received statutory recognition in the legislative, executive, and judicial appropriation act of June 22, 1906.<sup>28</sup>

A further reorganization of the First Assistant Postmaster General's Office was effected on July 1, 1906, by the consolidation of the Division of Bonds and the Division of Appointments into a

<sup>26</sup> Postmaster General, Annual report, 1905, 15-16.

<sup>27</sup> *Ibid.*, 16.

<sup>28</sup> 34 Stat. L., 389, 436.

Division of Postmaster's Appointments. This change also received legislative recognition in the act of February 26, 1907. The latter act made provision for the first time, under legislative, executive, and judicial expenses, for the Division of Railway Mail Service in the Second Assistant Postmaster General's Office. Prior to that time this service was provided for under the appropriations for the service of the Post Office Department.<sup>29</sup>

**Administrative Divisions, 1910-1911.** The general organization of the Post Office Department, as it was effected under the direction of Postmaster General Cortelyou, has remained substantially unchanged until the present time, although new divisions have been created, existing divisions abolished, and minor redistributions of duties undertaken. A Division of Miscellaneous Transportation was established by departmental order on April 30, 1910, in the First Assistant Postmaster General's Office, and the same order directed that so much of the Division of Contracts in the Office of the Second Assistant as related to star routes should be transferred to the Office of the Fourth Assistant and combined with the Division of Rural Delivery under the title of Division of Rural Mails. The Division of Contracts was abolished following the issuance of this order.<sup>30</sup> The Division of Inspection in the Office of the Second Assistant was discontinued on May 1, 1911, and its work transferred to the Divisions of Railway Adjustments, Miscellaneous Transportation, Railway Mail Service, and Rural Mails.<sup>31</sup>

**Postal Savings Banks; Parcels Post.** The act of June 25, 1910, establishing the United States Postal Savings Bank System, provided for a board of trustees composed of the Postmaster General, the Secretary of the Treasury, and the Attorney General, acting *ex officio*, which should exercise control, supervision, and administration of the postal savings depository offices designated and established by the board. To discharge the administrative duties imposed upon the Postmaster General by this act, an office was established in the department in charge of a Director of the Postal Savings

<sup>29</sup> 35 Stat. L., 184, 232; Postmaster General, Annual report, 1907, 103.

<sup>30</sup> Postmaster General, Annual report, 1911, 18; Checklist, 873n. This latter change received statutory recognition in the act of August 23, 1912.—37 Stat. L., 360, 402.

<sup>31</sup> Postmaster General, Annual report, 1911, 18; Official postal guide, 1911, 3.

System. This office continued as an independent agency under the immediate supervision of the Postmaster General until May 1, 1913, when it was transferred to the Office of the Third Assistant, in furtherance of the policy to assign to one bureau, as far as possible, all functions and duties of a related character.<sup>32</sup> The inauguration of the Parcels Post System on January 1, 1913, in accordance with the act of August 24, 1912, did not necessitate the establishment of a new division or office in the Post Office Department.<sup>33</sup>

**Consolidation and Redistribution of Certain Divisions, 1913-1917.** The Division of Equipment in the Second Assistant's Office and the Division of Topography in the Office of the Fourth Assistant were consolidated with the Division of Supplies in the Fourth Assistant Postmaster General's Office on July 1, 1913, by order of the Postmaster General, and the Division of Redemption in the Office of the Third Assistant was abolished by departmental order dated April 30, 1913, and its duties assigned to the Division of Stamps, which action received legislative recognition in the act of July 16, 1914. The title of the Assistant Attorney General for the Post Office Department was changed to the Solicitor for the Post Office Department by this latter act.<sup>34</sup>

The Division of Dead Letters was transferred from the Office of the Fourth Assistant to that of the First Assistant on February 1, 1915, and the title of the Division of Supplies was changed to the Division of Equipment and Supplies.<sup>35</sup> In accordance with the appropriation act of May 10, 1916, the Division of Salaries and Allowances and the Division of City Delivery in the First Assistant Postmaster General's Office were combined into a Division of Post Office Service on July 1, 1916, and the Division of Miscellaneous Transportation in the office of the Second Assistant discontinued.<sup>36</sup> The appointment of a Special Assistant to the Attorney

<sup>32</sup> 36 Stat. L., 814; Official postal guide, 1912, 4; Postmaster General, Annual report, 1913, 26. The propriety of creating a postal savings system had been discussed by successive Postmasters General for many years prior to its introduction in 1911.—Cf. Roper, *op. cit.*, 76.

<sup>33</sup> 37 Stat. L., 539, 557; Postmaster General, Annual report, 1913, 9.

<sup>34</sup> 38 Stat. L., 454, 495, 497; Official postal guide, 1913, 3-4; Postmaster General, Annual report, 1913, 189, 340.

<sup>35</sup> Postmaster General, Annual report, 1915, 104; 39 Stat. L., 86, 106; Official postal guide, 1915, 3-4.

<sup>36</sup> 39 Stat. L., 66, 105; Postmaster General, Annual report, 1916, 94; Official postal guide, 1918, 3.

General, to assist in the defense of cases against the United States arising out of the transportation of the mails and in other cases and matters affecting the postal revenues, was authorized by act of March 3, 1917.<sup>37</sup>

**War Activities.** Although the war activities of the Post Office Department were extensive, they called for the expansion of personnel in existing offices and divisions rather than the creation of additional agencies. Some of the most outstanding war-time duties of the department were: The organization and administration of mail service for the military forces at home and abroad, the sale of war-savings and thrift stamps, the registration of enemy aliens and reporting alien-owned property, recruiting for the army, navy, and marine corps, and use of its facilities for putting war plans and work of the government before the people.<sup>38</sup> A Censorship Board for foreign mails, composed of representatives chosen by the Postmaster General, the Secretaries of War and Navy, the War Trade Board, and the Committee of Public Information, was established by Executive order dated October 12, 1917.<sup>39</sup> By proclamation of the President, dated July 22, 1918, and issued under authority of a joint resolution of July 16, 1918, the Postmaster General was given charge of the supervision, possession, control, and operation of the telephone and telegraph systems of the United States for the duration of the war. Authority for government control of telephones and telegraph systems was revoked by act of July 11, 1919, to take effect on July 30, 1919.<sup>40</sup>

**New Divisions and Bureaus, 1921.** A number of recent changes have been effected in the organization of the Post Office Department. The office of the Director of the Postal Savings System was transferred from the Office of the Third Assistant to the Postmaster General's Office on May 17, 1921, by order of the Postmaster General; a Division of Air Mail Service has been established in the Second Assistant Postmaster General's Office; and a Division of Motor Vehicle Service has been organized in the Office of

<sup>37</sup> 39 Stat. L., 1058, 1060.

<sup>38</sup> For brief accounts of the war activities of the department, see Postmaster General, Annual report, 1918, 3; 1919, 7.

<sup>39</sup> *Ibid.*, 1918, 12.

<sup>40</sup> 40 Stat. L., 904; Pt. 2, 163; 41 Stat. L., 157.

the Fourth Assistant.<sup>41</sup> A Welfare Department, in charge of a Director, was established by order of the Postmaster General in June, 1921, and a Bureau of Information for the convenience of visitors in Washington on June 23, 1921.<sup>42</sup> The Budget and Accounting Act, approved June 10, 1921, provided for the establishment of a Bureau of Accounts in the Post Office Department, under the direction of a Comptroller appointed by the President, with the consent of the Senate, which should perform the administrative duties relating to the examination of the accounts and vouchers of the Postal Service previously imposed by law upon the Auditor for the Post Office Department. The latter office was abolished by this act and its officers and employees transferred to the new Bureau of Accounts.<sup>43</sup>

**Flexible Organization; Extreme Centralization.** The administrative organization of the Post Office Department, like that of the Department of State and the Department of Justice, has developed almost entirely through the issuance of departmental orders to which Congress has automatically accorded statutory recognition in successive appropriation acts. In only a very few instances has legislative action been taken with respect to the organization of the department prior to the issuance of orders by the Postmaster General effecting such organization, or without the express recommendation of that officer. As has been previously noted, a former head of the Post Office Department deplored the absence of a permanent administrative organization of the department, subject to change only by act of Congress. This complaint, however, has not been voiced by succeeding Postmasters General. The Post Office Department resembles, in many respects, a gigantic business enterprise, and as such, should continue to possess a large degree of flexibility in its organization and to be subject to the predominant control of the Postmaster General.

The present organization of the department, based primarily upon the arrangement effected by Secretary Cortelyou in 1905,

<sup>41</sup> Congressional directory (December, 1921), 275-76; 42 Stat. L., 29, 42; Postmaster General, Annual report, 1921, 45, 55, 57. The Air Mail Service of the Post Office Department was inaugurated on May 15, 1918.—*Ibid.*, 48.

<sup>42</sup> *Ibid.*, 72, 124.

<sup>43</sup> 42 Stat. L., 20, 24; Postmaster General, Annual report, 1922, 94.

groups certain related duties and services under the several Assistant Postmasters General. The various divisions in the department are in charge of superintendents or chiefs, subject to the general supervision of the Postmaster General or one of the Assistant Postmasters General. The extreme centralization of control maintained in the Post Office Department over the entire postal service does not lend itself readily to the efficient conduct of postal affairs and the supervision of local post offices. The vast territorial area over which the postal system of the United States at present extends suggests the advisability of the creation of territorial divisions or districts in charge of superintendents acting as intermediaries between the central department in Washington and the local branches of the postal service. Territorial divisions or districts are now maintained for purposes of inspection, and for the administration of the railway mail service, while, under authority of an act of March 3, 1917, sixty supplies and accounting offices, located in various cities throughout the country, have been established. These territorial areas are not coterminous, however, except in a few instances, and there is no central or coördinating agency to supervise and correlate their work, the superintendent of each district or office reporting directly to the Chief Post Office Inspector, the General Superintendent of the Railway Mail Service, or to the Comptroller and the Superintendent of Equipment and Supplies, as the case may be. Such divisions and offices furnish an adequate precedent for the further decentralization of the administrative duties of the department along territorial lines.<sup>44</sup>

<sup>44</sup> Official postal guide, 1920, 4-5, 46-48; 39 Stat. L., 1058, 1069; 1070, 1110; Postmaster General, Annual report, 1922, 2, 48.

## CHAPTER XVII

### THE DEPARTMENT OF THE INTERIOR

In tracing the development of administrative organization within the Department of the Interior, no attempt will be made to describe the internal arrangement of the several major subdivisions or bureaus of the department. Account will be taken only of the establishment of new bureaus and offices, and the transfer to other departments, or the discontinuance, of existing agencies.

**Assistant Secretary; Architect of Capitol Extension.** The Civil War period does not possess the significance, with respect to the organization of the Interior Department, that has been noted in describing the development of other executive departments. The appointment of an Assistant Secretary of the Interior by the President, with the consent of the Senate, was authorized by act of March 14, 1862.<sup>1</sup> The office of the Architect of Capitol Extension, which had been created on June 11, 1851, in accordance with an act of September 30, 1850, and placed under the jurisdiction of the Interior Department, but which had been transferred to the War Department on March 23, 1853, was retransferred to the Department of the Interior by joint resolution of April 16, 1862.<sup>2</sup>

**Agricultural Division Transferred to Department of Agriculture; Returns Office; Supervision of Potomac Waterworks.** The act of May 15, 1862, establishing a Department of Agriculture, directed the transfer of the Agricultural Division of the Patent Office to the new department.<sup>3</sup> A Returns Office was organized

<sup>1</sup> 12 Stat. L., 335, 369.

<sup>2</sup> 9 Stat. L., 523, 538; 12 Stat. L., 617; Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 436; Secretary of the Interior, Annual report, 1896, 122.

<sup>3</sup> 12 Stat. L., 387, 388. The first Secretary of the Interior, Mr. Ewing, proposed to Congress in his annual report for 1849 the establishment of a Bureau of Agriculture in the Interior Department and the transfer thereto of the agricultural matters at that time under the supervision of the Patent Office.—31 Cong. 1 sess. (1849-50), H. ex. doc. 5, 5. An appropriation for the collection of agricultural statistics and for other agricultural purposes had been voted for the first time in an act of March 3, 1839, to be paid from the Patent Fund.—5 Stat. L., 353, 354.

in the Department of the Interior, in accordance with an act of June 2, 1862, which authorized the Secretary of the Interior to create such an office, in charge of a clerk appointed by him, in which should be filed all contracts executed on behalf of the War, Navy, and Interior Departments.<sup>4</sup> The supervision of the Potomac Waterworks or the Washington Aqueduct, as it was sometimes called, including the office of Chief Engineer, was transferred from the War Department to the Department of the Interior by joint resolution of June 18, 1862.<sup>5</sup>

**Howard University; Bureau of Education.** The Secretary of the Interior was given supervision over congressional appropriations for the support of Howard University, incorporated in the District of Columbia by act of March 2, 1867, and was authorized to receive reports from the president and board of trustees of that institution.<sup>6</sup> The office of Commissioner of Public Buildings, which had been placed under the supervision of the Interior Department by act of August 4, 1854, was abolished by act of March 2, 1867, and its duties transferred to the Chief Engineer of the army, together with the supervision of the Washington Aqueduct.<sup>7</sup> The act of July 20, 1868, abolished the Department of Education, created by act of March 2, 1867, and provided for the establishment and attachment to the Department of the Interior of an Office of Education, in charge of a Commissioner, who should, subject to the direction of the Secretary of the Interior, discharge all the duties with respect to the Office of Education as were previously devolved by law upon the Commissioner, as head of the Department of Education. The title of the Office of Education was changed to the Bureau of Education in an appropriation act of July 12, 1870.<sup>8</sup>

**Superintendent of Public Documents; Board of Indian Commissioners.** The legislative, executive, and judicial appropriation act of March 3, 1869, authorized the Secretary of the Interior to

<sup>4</sup> 12 Stat. L., 411, 412.

<sup>5</sup> 12 Stat. L., 620.

<sup>6</sup> 14 Stat. L., 438; Secretary of the Interior, Annual report, 1896, 119.

<sup>7</sup> 10 Stat. L., 546, 573; 14 Stat. L., 457, 466.

<sup>8</sup> 14 Stat. L., 434; 15 Stat. L., 92, 106; 16 Stat. L., 230, 242; Secretary of the Interior, Annual report, 1896, 83; Institute for Government Research, The Bureau of Education (1923).

appoint a Superintendent of Public Documents, who should be charged with the duty of packing, distributing, collecting, arranging, classifying and preserving such documents, and compiling and supervising the biennial register.<sup>9</sup> An act of April 10, 1869, making an appropriation to enable the President to maintain peace and promote civilization among the Indians, authorized the President to organize a Board of Indian Commissioners, to be composed of not more than ten persons selected by him from men eminent for their intelligence and philanthropy, to serve without pecuniary compensation; which board should, under his direction, exercise joint control with the Secretary of the Interior over the disbursement of the appropriations made by this act. While the work of this board was intimately related to that of the Office of Indian Affairs, it was in no sense a part of the latter office, submitting its reports directly to the Secretary of the Interior.<sup>10</sup>

**Transfer of Certain Supervisory Duties to Attorney General.** The act of June 22, 1870, creating the Department of Justice, transferred to that department the supervisory power theretofore exercised by the Secretary of the Interior over the accounts of marshals, clerks, and other officers of the United States courts; and the act of March 5, 1872, transferred to that department all the powers and duties conferred upon the Secretary of the Interior relating to the imprisonment or discharge of convicted offenders against the laws of the United States, or to the reform school and jail in the District of Columbia. The sundry civil appropriation act of March 3, 1873, directed that the annual report of the Board of Metropolitan Police Commissioners of the District of Columbia, which had theretofore been submitted to the Secretary of the Interior in accordance with the act of August 6, 1861, creating the board, should be thereafter made to the Attorney General, who was charged with the disbursement of its appropriations.<sup>11</sup>

**Assistant Attorney General for Department of Interior; Freedmen's Hospital; U. S. Territories; Entomological Commission Transferred to Department of Agriculture.** The additional

<sup>9</sup> 15 Stat. L., 283, 292. Supervision of the keeping and distribution of public documents had been intrusted to the Secretary of the Interior by act of February 5, 1859.—11 Stat. L., 379.

<sup>10</sup> 16 Stat. L., 13, 40.

<sup>11</sup> 16 Stat. L., 162, 164; 17 Stat. L., 35; 12 Stat. L., 320, 325; 17 Stat. L., 510, 517; Secretary of the Interior, Annual report, 1863, 716.

Assistant Attorney General in the Department of Justice authorized by act of February 25, 1871, was assigned to the Department of the Interior and became the law officer for the latter department.<sup>12</sup> The Freedmen's Hospital and Asylum in the District of Columbia, which had been placed under the supervision and control of the Secretary of War by act of June 10, 1872, was transferred to the Interior Department by act of June 23, 1874.<sup>13</sup> By act of March 1, 1873, all of the powers and duties in relation to the territories of the United States, which by law or custom were exercised and performed by the Secretary of State, were transferred to the Secretary of the Interior, who thereafter received the reports of the several governors of the territories.<sup>14</sup> An Entomological Commission, composed of three skilled entomologists appointed by the Secretary of the Interior, was created by act of March 3, 1877, to report upon the depredations of the Rocky Mountain locusts in the western states and territories and the best practicable methods of preventing their recurrence, or guarding against their invasions. This commission was later transferred to the Department of Agriculture by acts of June 16, 1880, and March 3, 1881.<sup>15</sup>

**Commissioner of Railroads; Director of Geological Survey.** The Office of Auditor of Railroad Accounts was established as a Bureau of the Interior Department by the act of June 19, 1878. The Auditor was required, under the direction of the Secretary of the Interior, to prescribe a system of reports to be rendered to him by railroad companies whose roads were in whole or in part west, north, or south of the Missouri River, and to which the United States had granted any loan of credit or subsidy in bonds or lands; and to report annually to the Secretary of the Interior on the condition of each of such railroad companies, their roads, accounts, and affairs. The title of this officer was changed to the Commissioner of Railroads by act of March 3, 1881.<sup>16</sup> Upon the recom-

<sup>12</sup> 16 Stat. L., 432. Cf. Easby-Smith, *The department of justice*, 22 (1904).

<sup>13</sup> 17 Stat. L., 347, 366; 18 Stat. L., 204, 223; *Department of the Interior, Annual reports*, 1910, 4.

<sup>14</sup> 17 Stat. L., 484; Van Tyne and Leland, *op. cit.*, 202 (1907).

<sup>15</sup> 19 Stat. L., 344, 357; 21 Stat. L., 259, 276; 381, 383.

<sup>16</sup> 20 Stat. L., 169; 21 Stat. L., 385, 409.

mendation of the National Academy of Sciences, who proposed "that Congress establish, under the Department of the Interior, an independent organization, to be known as the United States Geological Survey, to be charged with the study of the geological structure and economic resources of the public domain, such survey to be placed under a director, who shall be appointed by the President, and who shall report directly to the Secretary of the Interior," Congress established the office of Director of the Geological Survey, under the Interior Department, by act of March 3, 1879.<sup>17</sup>

**Indian School Superintendent; Supervision of Education in Alaska.** The President was authorized by act of May 17, 1882, to appoint an Inspector of Indian Schools, who should be required to report plans for the most economical and efficient manner of educating the Indians. The reports of this officer were thereafter submitted to the Secretary of the Interior, the title of the office being changed to the Indian School Superintendent by act of March 1, 1883. This office was not made a subdivision of the Office of Indian Affairs, but was a separate agency in the Interior Department.<sup>18</sup> The act of May 17, 1884, providing a civil government for Alaska, made it the duty of the Secretary of the Interior to provide for the education of the children of school age in Alaska. This work was placed under the direction of the Commissioner of Education on March 2, 1885, by order of the Secretary of the Interior. The Commissioner, after a visit to Alaska in 1890 for the purpose of establishing schools, reported the need for an adequate food

<sup>17</sup> 20 Stat. L., 377, 394. The first definite appropriation for geological surveys was made by act of June 28, 1834, although numerous surveys for geographical and military purposes had been made prior to that time by the Engineer Corps of the Army, and paid from army appropriations.—4 Stat. L., 702, 704. For a history of the surveys made prior to 1879, see 49 Cong. 1 sess. (1885-86), S. rep. 1285, 28-43; 49 Cong. 1 sess. (1885-86), H. rep. 2740, 28-43. A brief statement of the organization of the Geological Survey and an outline of its operations may be found in 49 Cong. 1 sess. (1885-86), S. misc. doc. 82, 26-27. The recommendation of the National Academy of Sciences was submitted in accordance with an act of June 20, 1878.—20 Stat. L., 206, 230. For the complete report thus submitted, see 45 Cong. 3 sess. (1878-79), H. misc. doc. 5; see also Institute for Government Research, *The Geological Survey* (1918).

<sup>18</sup> 22 Stat. L., 68, 70; 433, 434; Department of the Interior, Annual reports, 1908, II, 127.

supply for the people of Alaska, and suggested the introduction of domestic reindeer from Siberia. This work was undertaken in 1891 through the gifts of private citizens, and Congress made the first appropriation "for the purpose of introducing and maintaining in the Territory of Alaska, reindeer for domestic purposes," in an act of March 3, 1893.<sup>19</sup>

**Bureau of Labor Transferred to Department of Labor; Office of First Assistant Secretary; Board of Pension Appeals.** An act of June 27, 1884, established in the Department of the Interior a Bureau of Labor, in charge of a Commissioner, to be appointed by the President, with the consent of the Senate. It was made the duty of the Commissioner "to collect information upon the subject of labor, its relations to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity," and to report annually to the Secretary of the Interior the information thus collected. The Bureau of Labor in the Department of Interior was abolished and a separate Department of Labor set up as an independent establishment by act of June 13, 1888.<sup>20</sup> A Board of Pension Appeals, composed of three members, to be appointed by the Secretary of the Interior, was established by act of July 7, 1884, while the appointment of an additional Assistant Secretary of the Interior, who should be known and designated as the First Assistant Secretary of the Interior, was authorized by act of March 3, 1885.<sup>21</sup>

**Commission to the Five Civilized Tribes; Superintendent of Documents Transferred to Government Printing Office.** A Commission to the Five Civilized Tribes, composed of three members appointed by the President, with the consent of the Senate, was created by act of March 3, 1893, to negotiate with the Indians, under the direction of the Secretary of the Interior, with respect to the allotment of lands in severalty to the Indians and the cession of lands to the United States not found necessary to be so allotted.

<sup>19</sup> 23 Stat. L., 24, 27; 27 Stat. L., 572, 590; Secretary of the Interior, Annual report, 1896, 84-85.

<sup>20</sup> 23 Stat. L., 60; 25 Stat. L., 182; Secretary of the Interior, Annual report, 1896, 80.

<sup>21</sup> 23 Stat. L., 159, 185; 478, 497.

The commission was required to report from time to time to the Secretary of the Interior concerning the progress of its negotiations.<sup>22</sup> The office of Superintendent of Documents in the Interior Department was abolished by act of January 12, 1895, which provided for the appointment of the Superintendent of Documents under the Government Printing Office. The Interior Department continued to distribute its own documents, however, and a clerk in the department had charge of that work until July 1, 1907, when it was transferred to the Supply Division by order of the Secretary of the Interior. The following year the work was reassigned to the newly created Division of Publications.<sup>23</sup>

**Proposal to Abolish Commissioner of Indian Affairs Defeated; Division of Pension Affairs.** A bill was introduced in the Senate on January 7, 1896, with the approval of the Secretary of the Interior, which sought to abolish the office of Commissioner of Indian Affairs, and to create an Indian Commission consisting of two civilian members and one army officer, which should have entire charge of matters pertaining to the Indians. This bill was never reported out of the Committee on Indian Affairs to which it was referred.<sup>24</sup> By order of the Secretary of the Interior, a Division of Pension Affairs was organized in his office on February 1, 1896. The Board of Pension Appeals was merged with this division, which was placed under the immediate supervision of the Assistant Secretary.<sup>25</sup>

**Departmental Organization Prior to 1900.** As indicated by the foregoing survey, the development of administrative organization in the Department of the Interior during the period from 1860 to the beginning of the twentieth century was marked by the establishment of a number of important bureaus and offices, some of which were later transferred to other departments or given an independent status. The organization of the department was not marked, however, by any such sweeping changes as have been noted in connection with the other executive departments.

<sup>22</sup> 27 Stat. L., 612, 645; Department of the Interior, Annual reports, 1900, II, 9.

<sup>23</sup> 28 Stat. L., 601, 610-11; Department of the Interior, Annual reports, 1907, 6. *Infra*, 368n.

<sup>24</sup> 54 Cong. 1 sess. (1895-96), Congressional Record, Vol. 28, Pt. 1, 486; Secretary of the Interior, Annual report, 1896, 37.

<sup>25</sup> Secretary of the Interior, Annual report, 1896, 31.

**Superintendent of Capitol Building and Grounds; Census Office Transferred to Department of Commerce and Labor.** Beginning in 1902, a considerable number of changes in the administrative organization of the Interior Department have been effected. The title of the office of Architect of the Capitol was changed to the Superintendent of Capitol Building and Grounds by act of February 14, 1902.<sup>26</sup> The establishment of a permanent Census Office as a bureau in the Department of the Interior by act of March 6, 1902, was the culmination of a decade of active agitation in favor of the establishment of such an office, which had its beginning in a Senate resolution passed on February 16, 1891, directing the Secretary of the Interior, "to consider the expediency of the establishment of a permanent Census Bureau and to embody the results of his consideration with a draft of a bill, should he consider it expedient, for the establishment of such a Census Bureau in a special report to be made to the Senate at the opening of the 52d Congress." In accordance with this resolution, a report was submitted to the Senate by the Secretary of the Interior on December 8, 1891, which contained a draft of a bill for a permanent Census Office in the Department of the Interior. A bill was introduced on December 14 to comply with this recommendation, which was referred to the Senate Committee on the Census, but it was never reported out of that committee.<sup>27</sup>

Three months after the introduction of this bill in the Senate, a resolution was adopted in the House of Representatives directing its Committee on the Census to inquire into the expediency of establishing a permanent Census Bureau and report thereon to the House. After an extended investigation, the committee made its report on February 1, 1893, submitting therewith a bill for a permanent Census Office in the Department of the Interior and recommending its passage. A minority report submitted a few days later opposed the project, declaring the establishment of a permanent bureau to be unwise, unnecessary, and extravagant. The bill received no further consideration in the House.<sup>28</sup> This subject

<sup>26</sup> 32 Stat. L., 5, 20.

<sup>27</sup> 32 Stat. L., 51; 51 Cong. 2 sess. (1890-91), Congressional Record, Vol. 22, Pt. 3, 2722; 52 Cong. 1 sess. (1891-92), *Ibid.*, Vol. 23, Pt. 1, 6, 420; 52 Cong. 1 sess. (1891-92), S. ex. doc. 1.

<sup>28</sup> 52 Cong. 1 sess. (1891-92), Congressional Record, Vol. 23, Pt. 2, 1658 (March 2, 1892); 52 Cong. 2 sess. (1892-93), H. rep. 2393.

did not receive attention in Congress again until March 19, 1896, when a joint resolution was passed directing the Commissioner of Labor to report to Congress for its consideration, as soon as practicable, a plan for a permanent census service. In his report to the Senate on December 8, 1896, the Commissioner of Labor, Mr. Carroll D. Wright, not only recommended a permanent bureau, but proposed that it be given a separate status, independent of any of the executive departments, and responsible directly to the President. Again no positive action was taken by Congress.<sup>29</sup>

A bill was introduced in the Senate on December 7, 1897, to provide for the taking of the twelfth census and to create an independent office to perform that duty. After an unsuccessful attempt was made to unite this office with the Department of Labor, the Senate amended the bill by placing the proposed office in the Department of the Interior. A bill was introduced in the House six months later which made the Census Office completely independent of any department and subordinate only to the President. The two bills were submitted to a conference committee, which reported a compromise bill, placing the Census Office "in the Department of the Interior," but not an integral part of it. The words in the Senate bill providing that the duties of the Director should be performed "under the direction of the head of the department" were omitted. The Attorney General interpreted the measure, which became law on March 3, 1899, as making the Director substantially independent of the Secretary of the Interior.<sup>30</sup>

The act of 1899 specifically stated that it was not to "be construed to establish a census bureau permanent beyond the twelfth census." The act of March 6, 1902, did not repeal this act, but

<sup>29</sup> 29 Stat. L., 468; 54 Cong. 2 sess. (1896-97), S. ex. doc. 5. Mr. Wright, as Commissioner of Labor, had been directed by the President, under authority of an act of October 3, 1893, to perform the duties of Superintendent of the Census under the direction of the Secretary of the Interior.—28 Stat. L., 3; Secretary of the Interior, Annual report, 1896, 80-81. A memorial of the American Economic Association and the American Statistical Association, urging the need for a permanent and independent Census Office, was presented to Congress on December 12, 1896.—54 Cong. 2 sess., S. ex. doc. 68, 37-39.

<sup>30</sup> 55 Cong. 2 sess. (1897-98), Congressional Record, Vol. 31, Pt. 1, 24, 45; Pt. 5, 4692; Pt. 6, 5642; Pt. 7, 6677; 55 Cong. 3 sess. (1898-99), *Ibid.*, Vol. 32, Pt. 2, 1147, 1507, 1529, 1788, 1993; Pt. 3, 2663, 2713; 30 Stat. L., 1014; 22 Op. Atty. Gen., 413 (March 28, 1899).

reënacted all of its provisions consistent with the permanent census law. The only material change which it made was the provision that all appointments to the permanent staff, while continuing to be made by the Director, should have the approval of the Secretary of the Interior. The Census Office was transferred from the Department of the Interior to the Department of Commerce and Labor by the act of February 14, 1903, creating the latter department.<sup>31</sup>

**Reclamation Service; Commissioner of Railroads Discontinued; Commission to the Five Civilized Tribes Abolished.** A Reclamation Service was established by act of June 17, 1902, under the direction of the Secretary of the Interior. The work was delegated by the Secretary to the Director of the Geological Survey, who supervised the work until the service was given the status of a bureau, in charge of a Director, by order of the Secretary, dated March 9, 1907.<sup>32</sup> The office of Commissioner of Railroads was discontinued by act of March 3, 1903.<sup>33</sup> The Indian appropriation act of April 21, 1904, directed that the Commission to the Five Civilized Tribes should conclude its work and terminate on or before July 1, 1905. By act of March 3, 1905, the powers and duties of the Commission were conferred upon the Secretary of the Interior, who appointed a Commissioner to the Five Civilized Tribes to exercise those powers, under his direction. This latter office was accorded statutory recognition in a deficiency appropriation act of December 19, 1906.<sup>34</sup>

**Administrative Divisions in Secretary's Office Abolished.** Secretary of the Interior Garfield endeavored to bring about a closer relationship between the head of the department and its several bureaus by the discontinuance of the Divisions of Indian Territory, Indian Affairs, Patents and Miscellaneous, and Lands and Rail-

<sup>31</sup> 32 Stat. L., 825, 826. For an account of the efforts looking toward the creation of a permanent and independent Census Office, see Willcox, The development of the American census office since 1890, *Political Science Quarterly*, XXIX, 438-59 (September, 1914); Parmelee, The statistical work of the federal government, *Yale Review*, XIX, 297-98 (November, 1910).

<sup>32</sup> 32 Stat. L., 388; Department of the Interior, Annual reports, 1907, 2, 41; Institute for Government Research, The Reclamation Service (1919).

<sup>33</sup> 32 Stat. L., 419, 456; 1083, 1119.

<sup>34</sup> 33 Stat. L., 189, 204; 1048, 1060; 34 Stat. L., 841, 842; Department of the Interior, Annual reports, 1904, II, 3; 1906, II, 589; Checklist, 437.

roads, created by his predecessors in the immediate office of the Secretary, and the transfer of their work to the various bureaus and offices dealing with those matters. In commenting on this change, Secretary Garfield said: "These divisions had outlived their usefulness, and had become stumbling blocks in the way of good administration, as they brought between the Secretary and the bureau chiefs an unnecessary examination of and action upon the work of the bureau or office. They furthermore had a tendency to lessen the responsibility and authority of the head of the bureau or office and interfere with the cordial and confidential relation that must exist between the Secretary and the head of an office if the best results are to be obtained." Secretary Garfield recommended to Congress the appointment of two undersecretaries in the department, in place of the Chief Clerk, who should constitute, together with the private secretary to the Secretary of the Interior, an administrative commission to have charge of all purely administrative matters, thus relieving the Secretary and the assistant secretaries of much detail work. This recommendation, however, was not acted upon by Congress.<sup>25</sup>

**Bureau of Mines; Superintendent of Indian Schools and Board of Pension Appeals Abolished.** An act of May 16, 1910, established in the Department of the Interior a Bureau of Mines, in charge of a Director appointed by the President, with the consent of the Senate. This bureau was charged, under the direction of the Secretary of the Interior, with the investigation of the methods of mining, especially in relation to the safety of miners, and the Secretary of the Interior was directed to transfer to it from the Geological Survey the supervision of the investigation of structural materials and the analyzing and testing of coals, lignites, and other mineral fuel substances and the investigation as to the causes of mine explosions. The latter provision was modified by

<sup>25</sup> Department of the Interior, Annual reports, 1907, 3, 7. Various divisions had been created from time to time, by administrative regulation, in the immediate office of the Secretary of the Interior. The first statutory provision for such divisions was voted in an act of June 15, 1880, which made appropriation for five clerks, as chiefs of divisions. No definite recognition by title of the divisions thus created was granted until the act of May 22, 1908, which made provision for a chief disbursing clerk and clerks in charge of supplies, publications, and mails, files, and archives.—21 Stat. L., 210, 230; 35 Stat. L., 184, 223.

the sundry civil appropriation act of June 25, 1910, which directed the transfer of the investigation of structural materials to the Bureau of Standards.<sup>36</sup> A new organic act for the Bureau of Mines was approved on February 25, 1913, which, although increasing the scope of its work, did not affect its status as a bureau of the Interior Department.<sup>37</sup> The office of Superintendent of Indian Schools was abolished on July 1, 1910, the Indian appropriation act of April 4, 1910, having failed to make provision for its maintenance.<sup>38</sup> The Board of Pension Appeals in the office of the Secretary of the Interior was abolished by act of March 4, 1911, upon the recommendation of the Secretary of the Interior, and its duties transferred to the office of the Assistant Attorney General for the Interior Department, but three years later Congress made provision in the appropriation act of July 16, 1914, for three members of a Board of Appeals, to be appointed by the Secretary of the Interior.<sup>39</sup>

**Alaskan Engineering Commission; Solicitor; Superintendent for the Five Civilized Tribes.** Under authority of an act approved March 12, 1914, which empowered and directed the President to locate, construct, and operate railroads in the Territory of Alaska, a commission of three engineers was appointed by the President to make the necessary surveys. This commission which became known as the Alaskan Engineering Commission, was directed to report to the Secretary of the Interior, under whom the President placed the general administration of the work. Construction of the railroad was begun in 1915, under general direction of the Secretary of the Interior.<sup>40</sup> The title of the Assistant Attorney General assigned to the Interior Department was changed to the Solicitor for the Department of the Interior by act of July 16, 1914,

<sup>36</sup> 36 Stat. L., 369; 703, 765; Department of the Interior, Annual reports, 1910, 2, 24-25; Checklist, 471n, 557; Institute for Government Research, The Bureau of Mines (1922).

<sup>37</sup> 37 Stat. L., 681; Department of the Interior, Annual reports, 1916, 535.

<sup>38</sup> 36 Stat. L., 269, 272; Checklist, 497n; Department of the Interior, Annual reports, 1910, 44.

<sup>39</sup> 36 Stat. L., 1170, 1214; Department of the Interior, Annual reports, 1910, 52; 38 Stat. L., 454, 488.

<sup>40</sup> 38 Stat. L., 305; Congressional directory (December, 1921), 341; Institute for Government Research, The Alaskan Engineering Commission (1922).

while the act of August 1, 1914, enlarged the work of the Commissioner of the Five Civilized Tribes to include the administration of the affairs of the individual restricted Indians, and changed the title of that officer to Superintendent for the Five Civilized Tribes.<sup>41</sup>

**National Park Service.** The various national parks, which had been placed under the exclusive control of the Secretary of the Interior upon their establishment, beginning with Yellowstone in March, 1872, were administered, prior to 1914, as separate reservations in charge of superintendents reporting directly to the Secretary of the Interior. On June 4, 1914, a General Superintendent and Landscape Engineer of National Parks was appointed by the Secretary of the Interior and given supervision over all the national parks and reservations. This officer maintained headquarters in the field for about two years, when he was called to Washington and a permanent office established in the Interior Department. Statutory provision for this office was made by Congress in a deficiency appropriation act of February 28, 1916, and in the sundry civil appropriation act of July 1, 1916.<sup>42</sup>

This arrangement for the supervision of national parks was a temporary one made by the Secretary of the Interior until Congress might deem it advisable to act upon his recommendation for the establishment of a National Park Service as a separate bureau in the department. Such a Service, in charge of a Director appointed by the Secretary of the Interior, was established by act of August 25, 1916. The Service was not organized, however, until April 17, 1917, as Congress failed to make appropriations for its organization and maintenance until that date. Commenting upon the establishment of this Service in his annual report for 1916, the Secretary said: "There has heretofore been no service to which the duty of administering the national parks has been delegated. The work has been done by a small and inadequate force in the Secretary's Office, the members of which had their regular departmental duties to perform and have given such time

<sup>41</sup> 38 Stat. L., 454, 497; 582, 598; Department of the Interior, Annual reports, 1915, II, 327.

<sup>42</sup> 39 Stat. L., 14, 23; 262, 309; Department of the Interior, Annual reports, 1914, 88; Institute for Government Research, *The National Park Service* (1922).

as has been possible to the park work. Each of the national parks has been created by law differing more or less from the law creating each of the other parks, and heretofore they have been administered as individual reservations with no particular relation to each other. This method of handling the parks has, for reasons that are quite apparent, been both inefficient and unsatisfactory."<sup>43</sup>

**War Work.** The war work of the Department of the Interior was confined largely to the duties performed by the Geological Survey and the Bureau of Mines, in coöperation with the War and Navy departments and with special war agencies. Thus the Geological Survey was engaged in geologic investigations, topographical surveys, and water resources investigations, of value to other departments and services, while the Bureau of Mines was engaged in chemical warfare investigation, regulation of explosives, war mineral investigations, metallurgical investigations, and the study of petroleum and natural gas problems. The chemical warfare investigation work was transferred to the Chemical Warfare Service of the War Department by Executive order dated June 25, 1918.<sup>44</sup>

**War Minerals Relief Commission; Alaskan Advisory Commission; Superintendent of Capitol Buildings and Grounds Again Becomes the Architect of the Capitol.** Under authority of an act of March 2, 1919, authorizing the Secretary to adjust claims for losses incurred in procuring or preparing certain minerals during the World War, a War Minerals Relief Commission of three members was appointed by the Secretary of the Interior to assist him in the adjustment of such claims. Following the resignation of the members of this commission, the work was placed in charge of a single commissioner by the Secretary of the Interior on June 6, 1921.<sup>45</sup> An Alaskan Advisory Commission was appointed by the Secretary of the Interior on April 22, 1920, composed of representatives from the Interior, Post Office, and Agricultural Departments, and the Shipping Board, to advise the Secretary as to the

<sup>43</sup> 39 Stat. L., 535; Department of the Interior, Annual reports, 1916, 85-86.

<sup>44</sup> Department of the Interior, Annual reports, 1918, 32-33, 104.

<sup>45</sup> 40 Stat. L., 1272, 1274; Department of the Interior, Annual reports, 1919, 120; 1921, 101.

immediate steps that should be taken to better conditions in Alaska.<sup>46</sup> The title of the Superintendent of Capitol Buildings and Grounds was again changed to the Architect of the Capitol by act of March 3, 1921, and the office was removed from the jurisdiction of the Interior Department, except in the disbursement of its appropriations, by act of March 20, 1922, which gives it an independent status, subject to Congressional supervision.<sup>47</sup>

**Distinctive Characteristics of Organization.** Since its establishment in 1849, the administrative organization of the Department of the Interior has been characterized by the arbitrary grouping of a number of unrelated services into one department, under the general supervision of the Secretary of the Interior. Most of these services, however, are concerned with matters which come within the broad category of domestic or internal affairs. As noted in a previous chapter dealing with this department, the organic act of 1849 did not give the Department of the Interior exclusive jurisdiction over this branch of administration, while the establishment of the Departments of Agriculture and Commerce and Labor resulted in the transfer to those departments of several bureaus and offices previously located in the Interior Department. Still other services, at present under the jurisdiction of the Department of the Interior, might well be assigned to other departments, such as the Patent Office to the Department of Commerce, the Bureau of Pensions to the War and Navy departments or to the Veterans' Bureau, the Office of the Architect of the Capitol to the Supervising Architect's Office in the Treasury Department, and the supervision of certain eleemosynary institutions to the Commissioners of the District of Columbia.<sup>48</sup>

Another characteristic of the administrative organization of the Interior Department which deserves notice is the large degree of

<sup>46</sup> Department of the Interior, Annual reports, 1920, 201.

<sup>47</sup> 41 Stat. L., 1252, 1291; 42 Stat. L., 422, 430; Secretary of the Interior, Annual report, 1922, 138. The office of Superintendent of Library Buildings and Grounds was abolished by act of June 29, 1922, and its duties transferred to the Architect of the Capitol.—42 Stat. L., 715.

<sup>48</sup> Secretary Ballinger, in his annual report for 1910, called attention to the advisability of the transfer of such services in the Interior Department to other departments or establishments.—Department of the Interior, Annual reports, 1910, 5-6.

independence possessed by the heads of the major bureaus or subdivisions of the department over the conduct of their respective services, subject only to the supervisory and appellate powers of the Secretary of the Interior. In this respect the Interior Department is somewhat similar to the Treasury Department without, however, furnishing equally valid considerations for such a serious departure from the departmental system of administrative organization. Secretary Garfield in 1907 sought to establish a closer relationship between the various bureau chiefs or commissioners and the Secretary by dealing directly with the heads of those bureaus instead of through the medium of divisions established in the Secretary's Office by administrative order. Further steps might well be taken with the approval or at the direction of Congress, to centralize administrative control within that department, by giving to the Secretary of the Interior a larger degree of supervision and direction over the personnel and organization of its several bureaus.

Finally, attention is called to the division of work in connection with the administration of Indian affairs between three separate agencies, namely, the Office of Indian Affairs, the Board of Indian Commissioners, and the Superintendent for the Five Civilized Tribes, and to the differentiation of scientific activities in the department by the separation of the work in connection with reclamation projects and mine investigations from the Geological Survey, and their establishment as separate services in the department. There seems to be no reasonable justification for this division of work in connection with the Indian Affairs between agencies entirely independent of each other, and the question might also be raised as to the advisability of placing under one directing head all of the scientific work of the department, retaining of course, the present organization of the Geological Survey, the Reclamation Service, and the Bureau of Mines, which would constitute branches of one scientific or technical bureau.

## CHAPTER XVIII

### THE DEPARTMENT OF AGRICULTURE

**Proposals for a Department of Agriculture.** The first official proposals for the extension of the sphere of activities of the national government in the United States to include the promotion and encouragement of agriculture seem to have been made by President Washington in his annual messages to Congress. In 1789, he referred to agriculture as a pursuit that should be encouraged along with commerce and manufactures, and in his last annual message, dated December 7, 1796, he made a more definite recommendation, namely, the establishment of a board or boards of agriculture composed of proper characters, "charged with collecting and diffusing information, and enabled by premiums and small pecuniary aid to encourage and assist a spirit of discovery and improvement."<sup>1</sup> That Washington entertained some doubt as to the constitutionality of a pecuniary grant by the national government for the encouragement of agriculture is revealed in a letter written to Hamilton on October 14, 1791. Hamilton himself had expressed the view in December, 1787, that the supervision of agriculture could never become one of the "desirable cares of a general jurisdiction."<sup>2</sup>

In response to President Washington's recommendation, the Senate assured him that "the encouragement due to agriculture by the creation of Boards, (composed of intelligent individuals) to patronize this primary pursuit of society," was a subject which would engage its most serious attention; while the House referred

<sup>1</sup> Messages and papers of the presidents (ed. Richardson), I, 66, 202. Washington's proposal in 1796 was influenced, no doubt, by the establishment of the British Board of Agriculture in 1793, of which he was himself an honorary member, and the president of which, Sir John Sinclair, was his friend and correspondent.—Greathouse, Historical sketch of the U. S. department of agriculture, 6 (1907); Learned, The president's cabinet, 297-303 (1912).

<sup>2</sup> Writings of George Washington (ed. Ford), XII, 84; Works of Alexander Hamilton (ed. Lodge), IX, 98.

the subject to a select committee of three members, which submitted a report on January 11, 1797, recommending the establishment of a society for the promotion of agriculture at the seat of Government, to be composed of the legislature of the United States, the judges, the Secretaries of State, Treasury, and War and the Attorney General and such other persons as should choose to become members agreeably to the rules prescribed. It was proposed that this society should meet annually to elect a president, a secretary, and a board of agriculture to consist of not more than thirty members. No public provision for this society was contemplated except for the salary of the secretary and for stationery. The report of the committee was referred to the committee of the whole, but it became confused with a discussion of direct taxes and the proposal for a military academy, with which it was associated, and received no further consideration.<sup>3</sup>

The subject of a board of agriculture does not seem to have again engaged the attention of Congress until 1817, when a petition was presented on January 29 of that year from the Berkshire Association for the Promotion of Agriculture and Manufactures in Massachusetts, praying "that the aid of the National Government may be extended to the promotion of the interests of agriculture and manufacturing, either by the establishment of a national board, or by such other measures as in the wisdom of Congress may seem meet and proper." This memorial was referred to a select committee, which reported a bill on February 21 for the establishment of a national board of agriculture. The bill was referred to the committee of the whole, but, as in 1797, no further action was taken.<sup>4</sup>

Again a period of twenty years elapsed before another definite proposal was submitted to Congress on this subject, although a Committee on Agriculture was appointed in the House of Representatives in 1820 and a similar committee in the Senate in 1825.<sup>5</sup> Henry L. Ellsworth, who was appointed Commissioner of Patents following the creation of that office by act of July 4, 1836, undertook to provide for the distribution to farmers throughout the

<sup>3</sup> 4 Cong. 2 sess. (1796-97), *Annals of Congress*, 1520, 1671, 1835.

<sup>4</sup> 14 Cong. 2 sess. (1816-17), *Ibid.*, 769, 1018.

<sup>5</sup> 16 Cong. 1 sess. (1820-21), *Ibid.*, 2179; 19 Cong. 1 sess. (1825-26), *Register of Debates*, Vol. 2, Pt. 1, 5-7.

country of such seeds, plants, and animals as were received from consular officers or from unofficial sources abroad. This work was carried on for two years without congressional authority or assistance. In his first annual report Ellsworth strongly urged upon Congress the desirability of making definite provision for this work and, largely as the result of his efforts, Congress voted a small appropriation in an act of March 3, 1839, for "the collection of agricultural statistics, and for other agricultural purposes."<sup>6</sup>

The first proposal, of which record has been found, for the establishment of a separate bureau or department in the national government to be devoted to the interests of agriculture, was that contained in a petition of Joseph Smith and others, presented by Henry Clay in the Senate on February 3, 1840, praying for the establishment of a new department in the government to be devoted to the joint interests of agriculture and education. This petition was referred to the Committee on Agriculture, but received no further attention.<sup>7</sup> In his annual report for 1842, Ellsworth recommended the establishment of a separate agricultural bureau, or, if Congress did not see fit to go that far, he suggested that even a clerk in his office definitely assigned to the work of distributing seeds and collecting agricultural statistics could be of much service to the farming interests.<sup>8</sup> Congress, however, paid no attention to this recommendation and the work continued to be performed under the personal direction of succeeding Commissioners of Patents.

The Patent Office, with its agricultural work, was transferred from the Department of State to the Department of the Interior by the act of March 3, 1849, and in that year an officer was appointed in the Patent Office with the title of Collector of Agricultural Statistics. This office was not recognized by statute, the salary of the collector being paid from the fund for the collection of agricul-

<sup>6</sup> 5 Stat. L., 117; 353, 354; 25 Cong. 2 sess. (1837-38), H. ex. doc. 112, 4-6; S. ex. doc. 105, 4-6. For a period of forty years prior to this time the State Department, through its representatives abroad, had imported seeds, plants, and animals into the United States.—Cf. Greathouse, *op. cit.*, 7; Learned, *op. cit.*, 308-09; True, *The U. S. department of agriculture, 1862-1912*, 3 (Reprint from Proceedings of the Twenty-sixth Annual Convention of the Association of American Agricultural Colleges and Experiment Stations, Atlanta, November 13-15, 1912).

<sup>7</sup> 26 Cong. 1 sess. (1839-40), Congressional Globe, Vol. 8, 159.

<sup>8</sup> 27 Cong. 3 sess. (1842-43), S. ex. doc. 129, 3.

tural statistics.<sup>9</sup> President Taylor, in his annual message of December 4, 1849, recommended "the establishment of an agricultural bureau, to be connected with the Department of the Interior." This was the first definite recommendation relating to agriculture made by any President since the time of Washington. "Although Congress took no action on Taylor's recommendation," says Learned, "the passage in the message brought the subject once more into prominence at an epoch when both local and national authorities were to become satisfied that a bureau or department of agriculture was a necessary addition to the organization of the central government. To get such an organization established was one of the many notable tasks of the next momentous decade."<sup>10</sup>

President Fillmore, in his annual message delivered on December 2, 1850, repeated the recommendation of his predecessor on this subject, by urging "the establishment of an agricultural bureau, to be charged with the duty of giving to this leading branch of American industry the encouragement which it so well deserves." He further proposed that provision be made "for the employment of a competent mineralogist and chemist, who should be required, under the direction of the head of the bureau, to collect specimens of the various minerals of our country and to ascertain by careful analysis their respective elements and properties and their adaptation to useful purposes."<sup>11</sup> The legislature of Pennsylvania, in a communication addressed to the Senators and Representatives from that state in Congress on April 15, 1850, urged the establishment of a national board of agriculture.<sup>12</sup> Congress paid no heed to these recommendations, however, and it was not until ten years later that the creation of a central organization for the promotion of agriculture was again officially proposed to Congress.

In 1852 a national agricultural society was organized which was to exert a marked influence in securing legislation from Congress

<sup>9</sup> Stat. L., 396; Greathouse, *op. cit.*, 9.

<sup>10</sup> Messages and papers of the presidents, V, 18; Learned, *op. cit.*, 314. Secretary of the Interior Ewing, in his annual report for 1849, also recommended to Congress the establishment of a bureau of agriculture in the Department of the Interior and the transfer to it of the agricultural work then being performed by the Patent Office.—31 Cong. 1 sess. (1849-50), H. ex. doc. 5, 5.

<sup>11</sup> Messages and papers of the presidents, V, 86.

<sup>12</sup> 31 Cong. 1 sess. (1849-50), S. misc. doc. 107.

to establish a separate department of agriculture a decade later. This society, which took the name of the United States Agricultural Society, was organized on June 25, 1852, through the coöperation of a group of men actively interested in various local agricultural boards and societies scattered principally over the northeastern states. The establishment of a national department of agriculture with a cabinet officer at its head was recommended by a unanimous vote of the society at its first annual meeting in February, 1853, and this recommendation was frequently repeated in the succeeding meetings of the society. Presidents Fillmore, Pierce, Buchanan, and Lincoln were successively chosen as honorary members of the society, while many prominent members of Congress served as regularly qualified delegates to its sessions. Through the medium of a Journal, the society expressed its views on national and local affairs and sought to focus public attention on the proper solution of the problem of government aid for the farmer.<sup>13</sup>

In a report submitted on January 29, 1861, Mr. T. G. Clemson, at that time Superintendent of the Agricultural Division of the Patent Office, characterized his division as an "embryotic organization," which should be altered so as to give it the independent standing of a department. "Such a Department," he declared, "should know no section, no latitude, no longitude. It should be subservient to no party other than the great party of production."<sup>14</sup> A more comprehensive proposal was submitted by Mr. Holloway, Commissioner of Patents, in 1861, who recommended the establishment of a department of the productive arts, in charge of a secretary or minister of industry. He emphasized the economic consequences of the Civil War, necessarily involving a vast debt, which would weigh heavily on all the productive interests. "These interests," he concluded, "must be recognized, fostered, and organized, that they may be equal to the burden and the extinguishment of this debt."<sup>15</sup>

<sup>13</sup> For a good account of the organization and activities of the United States Agricultural Society, in relation to the question of a national Department of Agriculture, see Learned, *op. cit.*, 315-328; also Wanlass, *The U. S. department of agriculture*, Johns Hopkins Studies in Historical and Political Science, Series 38, No. 1, 18-20 (1920).

<sup>14</sup> 36 Cong. 2 sess. (1860-61), H. ex. doc. 48, 11.

<sup>15</sup> 37 Cong. 2 sess. (1861-62), S. ex. doc. 39, 5-6, 20.

**Establishment of a Department of Agriculture, 1862.** A more moderate view on this subject was presented by Secretary of the Interior Caleb Smith in his annual report of November 30, 1861. "I feel constrained," said the Secretary, "to recommend the establishment of a Bureau of Agriculture and Statistics, the need whereof is not only realized by the heads of departments, but is felt by every intelligent legislator."<sup>16</sup> This conservative proposal no doubt influenced President Lincoln in his annual message delivered three days later, to "venture the opinion that an agricultural and statistical bureau might profitably be organized."<sup>17</sup> In spite of the all-important questions relating to the struggle for the maintenance of the Union, Congress was quick to act upon these recommendations, and a bill was introduced in the House on January 7, 1862, providing for an agricultural and statistical bureau, which was referred to the Committee on Agriculture. The committee reported a substitute bill on February 11, which provided for the establishment of a department of agriculture in charge of a commissioner, who should be appointed by the President. The bill was passed by a large majority on February 17, and sent to the Senate.<sup>18</sup>

The Senate debate on the bill centered largely around the question as to whether the new organization should be a bureau in the Interior Department or a separate department in charge of a cabinet officer. The House bill represented a compromise between these two positions, giving the department a separate status, but placing it in charge of a commissioner, with rank and salary distinctly below that of the secretaries of the several executive departments. The bill passed the Senate on May 8, 1862, and was approved by the President on May 15, 1862.<sup>19</sup> Widespread and persistent agitation, extending over a period of more than seventy years, for the creation of a separate bureau or department devoted to the interests of agriculture, and aided by the rapid growth of the country in population, resources, and wealth, reached its fruition in the passage of this act during a most critical period of the Civil War. The favorable attitude of Congress at this time to the

<sup>16</sup> 37 Cong. 2 sess., S. ex. doc. 1, 451-52.

<sup>17</sup> Messages and papers of the presidents, VI, 53.

<sup>18</sup> 37 Cong. 2 sess., Congressional Globe, Vol. 32, Pt. 1, 218, 855-56, 857.

<sup>19</sup> 12 Stat. L., 387; 37 Cong. 2 sess., Congressional Globe, Vol. 32, Pt. 3, 2013.

interests of agriculture is further evidenced by the passage of the Morrill Act of July 2, 1862, granting large tracts of public lands for the establishment of an agricultural college in each of the states, and the Homestead Act of May 20, 1862.<sup>20</sup>

**Organization, 1862-1883.** The first Commissioner of Agriculture appointed under the act of 1862 was Mr. Isaac Newton, who had served the previous year as Chief of the Agricultural Division of the Patent Office. The general duties of the new department, as stated in the organic act, were "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of the word, and to procure, propagate, and distribute among the people new and valuable seeds and plants." All of the property of the Agricultural Division of the Patent Office was transferred to the new department. The act made no provision for the internal organization of the department other than for the appointment, by the Commissioner, of a chief clerk and persons skilled in the natural sciences pertaining to agriculture, including chemists, botanists, and entomologists.

The Commissioner of Agriculture began immediately to effect an organization of his department. The propagating garden, which had been started in 1858, was turned over to the department in 1862 and a Division of Gardens and Grounds was organized in charge of a superintendent. A department chemist was appointed on August 21, 1862, and a statistician and an entomologist the following year.<sup>21</sup> Definite statutory provision was made in an act of June 25, 1864, for a chemist, an entomologist, and a superintendent of the seed room, and for the purchase of a library and laboratory, while additional provision was made in an act of July 20, 1868, for a botanist, a statistician, a superintendent of experimental gardens, a superintendent of folding-room, librarian, and a disbursing clerk.<sup>22</sup> A Division of Microscopy was established in 1871, which was given statutory recognition in an act of March 3, 1873.<sup>23</sup>

<sup>20</sup> 12 Stat. L., 392; 503.

<sup>21</sup> Greathouse, *op. cit.*, 10; Checklist of U. S. public documents, 1799-1909 (hereinafter cited as "Checklist"), 220, 223, 250.

<sup>22</sup> 13 Stat. L., 145, 155; 15 Stat. L., 92, 105.

<sup>23</sup> Greathouse, *op. cit.*, 14; 17 Stat. L., 485, 506.

Investigations in forestry were begun by the department under a clause in an act of August 15, 1876, which authorized the Commissioner of Agriculture to appoint a man of approved attainments to conduct that work. A special agent was accordingly appointed by the Commissioner in 1877 and a Division of Forestry organized in 1880. This division received statutory recognition in an act of June 30, 1886.<sup>24</sup> A Division of Accounts and Disbursements was established by act of June 16, 1880, as a branch of the Commissioner's Office, which became a separate division in 1889.<sup>25</sup> The Entomological Commission created in the Department of the Interior by act of March 3, 1877, was transferred to the Department of Agriculture by acts of June 16, 1880, and March 3, 1881. This latter act carried the last appropriation made for the commission, which was discontinued on June 30, 1882, and its work taken over by the Division of Entomology.<sup>26</sup> An act of January 20, 1883, made provision for a curator of the department museum.<sup>27</sup>

**Bureau of Animal Industry.** The first investigations of animal diseases were instituted by the department in 1878, under authority of a provision in the sundry civil appropriation act of June 20, 1878. This work was gradually extended by reason of increased appropriations and a veterinary experiment station established at Washington, in charge of an officer of the department. The importance of this work, which was the first exercise by the department of large administrative functions affecting the welfare of the people generally, led to the establishment of a Bureau of Animal Industry by act of May 29, 1884, in charge of a Chief appointed by the Commissioner of Agriculture, charged with the prevention of the exportation of diseased cattle, and the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals. Upon the organization of this bureau, the work of the Treasury Cattle Commission established by act of March 3, 1881, was transferred to it.<sup>28</sup>

<sup>24</sup> 19 Stat. L., 143, 167; 24 Stat. L., 100, 103; Greathouse, *op. cit.*, 14, 50; Checklist, 241.

<sup>25</sup> 21 Stat. L., 292; Greathouse, *op. cit.*, 53.

<sup>26</sup> 19 Stat. L., 344, 357; 21 Stat. L., 259, 276; 381, 383; Checklist, 222; Greathouse, *op. cit.*, 18.

<sup>27</sup> 22 Stat. L., 408, 409.

<sup>28</sup> 20 Stat. L., 206, 240; 23 Stat. L., 31; Greathouse, *op. cit.*, 16, 17-18; True, *op. cit.*, 5; *Supra*, 275; 21 Stat. L., 435, 442; Checklist, 1021.

**Divisions of Ornithology and Mammalogy, Pomology, Vegetable Physiology and Pathology, and Illustrations.** In response to a demand for an investigation of the damage done to crops and fruits by birds, this work was undertaken by the Division of Entomology in 1885, and on July 1, 1886, a Division of Ornithology and Mammalogy was established, which received statutory recognition in an act of March 3, 1887.<sup>29</sup> A Division of Pomology was organized in the department on July 1, 1886, in accordance with an act of June 30 of that year.<sup>30</sup> A Mycology Section was formed in the Division of Botany in 1886, which received statutory recognition under the title of the Section of Vegetable Pathology in an act of March 3, 1887. This section was organized as an independent Division of Vegetable Physiology and Pathology under the act of July 14, 1890.<sup>31</sup> The appointment of a draftsman for the department was authorized by act of March 3, 1887, who was placed in charge of a Division of Illustrations, with the title of Chief Artist and Draftsman by act of July 14, 1890.<sup>32</sup>

**Office of Experiment Stations.** Following the passage of the Hatch Act of March 2, 1887, for the establishment of agricultural experiment stations in all of the states, an Office of Experiment Stations was established by the Commissioner of Agriculture, in charge of a Director, which was required to furnish forms for the tabulation of results of investigations or experiments, to indicate such lines of inquiry as should seem to the Director to be most important, and, in general, to furnish such advice and assistance as would best promote the purposes of the act. The salaries and expenses of this office were paid from a lump sum appropriation voted in an act of July 18, 1888, and subsequent acts, to enable the Commissioner to carry out the provisions of Section 3 of the Hatch Act.<sup>33</sup>

**Establishment of the Present Department of Agriculture, 1889.** Although the foregoing survey of the administrative organization of the Department of Agriculture during the period from 1862 to

<sup>29</sup> Greathouse, *op. cit.*, 20; Checklist, 217; 24 Stat. L., 495, 496.

<sup>30</sup> 24 Stat. L., 100.

<sup>31</sup> Greathouse, *op. cit.*, 20; Checklist, 278; 24 Stat. L., 495, 496; 26 Stat. L., 282, 283.

<sup>32</sup> 24 Stat. L., 495; 26 Stat. L., 282, 284.

<sup>33</sup> 24 Stat. L., 440; 25 Stat. L., 328, 334; Greathouse, *op. cit.*, 20; True, *op. cit.*, 6.

1889 indicates the rapid growth and expansion of the activities of the department, which was accompanied by a corresponding increase in the amounts of public funds appropriated for that department from year to year, the more ardent and enthusiastic leaders and representatives of agricultural associations and interests were not satisfied. It may be recalled that the United States Agricultural Society, established in 1852, repeatedly urged upon Congress, prior to the passage of the act of 1862, the establishment of a department of agriculture upon a plane of equality with the other executive departments, and in charge of an officer entitled to a seat in the President's Cabinet.

This agitation was renewed at a meeting of the National Grange at Chicago in 1876, at which time a resolution was passed demanding that American agriculturalists "be recognized as a real factor in the Government by the establishment of a bureau of agriculture, to be presided over by a Cabinet officer, who shall organize the same upon a plan to be devised by the wisdom of Congress. . . ." <sup>34</sup> This demand was persistently pressed by the National Grange and, later, by the Farmers' Congress and other influential bodies. Beginning in 1881 a series of bills and resolutions were introduced in one or both Houses of Congress for the elevation of the Department of Agriculture to the status of an executive department, in order that a secretary might thus be obtained to represent farming interests in the Cabinet. A large number of memorials and petitions were presented to Congress on the subject. Those members of Congress opposed to such action argued that it was class legislation and, further, the fostering of agriculture was not a necessary part of government. The widespread agitation in favor of such a measure, however, could no longer be denied, and on February 9, 1889, President Cleveland gave his approval to a bill which raised the Department of Agriculture to the grade of an executive department, in charge of a Secretary of cabinet rank.<sup>35</sup>

<sup>34</sup> True, *op. cit.*, 6; Greathouse, *op. cit.*, 21.

<sup>35</sup> 50 Cong. 1 sess. (1887-88), Congressional Record, Vol. 19, 4477, 4876, 8686, 8778, 8801-05; 50 Cong. 2 sess. (1888-89), *Ibid.*, Vol. 20, 1398, 1399, 1413, 1764. For a history of the various measures introduced in Congress, beginning on February 7, 1881, see *Ibid.*, Vol. 19, 9303; 25 Stat. L., 659.

**Division of Publications; Silk Section; Irrigation Inquiry Office.** The act of 1889 placed at the head of the Department of Agriculture a Secretary appointed by the President, with the consent of the Senate, whose salary was made the same as that paid to the Secretaries of the other executive departments. The act also authorized the appointment of an Assistant Secretary by the President, with the consent of the Senate, who was granted a salary similar to that received by the First Assistant Secretary of the Interior. No other changes or additions in the organization of the department were introduced. The first Secretary of Agriculture, Mr. Colman, who was appointed by President Cleveland immediately upon the passage of the act of 1889, had previous to that time been Commissioner of Agriculture. He held office less than a month, being succeeded by Mr. Rusk, an appointee of President Harrison, on March 7, 1889. Secretary Rusk, in reorganizing the department, divided its work into two main classes: executive, under the immediate charge of the Secretary; and scientific, under the Assistant Secretary.<sup>36</sup> One of the first changes introduced by Secretary Rusk was the establishment of a separate Division of Records and Editing to have charge of the distribution to farmers of the information gathered by the department. Statutory provision for this division was made in an act of July 14, 1890. The title of this division was changed to the Division of Publications by act of March 2, 1895.<sup>37</sup> By order of October 28, 1889, the Silk Section of the Division of Entomology was given an independent status, but was discontinued on June 30, 1891, for lack of appropriations.<sup>38</sup> Under a provision in the urgent deficiency act of April 4, 1890, an Irrigation Inquiry Office was established by the Secretary of Agriculture. Appropriations were continued by subsequent acts until June 30, 1896, when the office was abolished.<sup>39</sup>

<sup>36</sup> Greathouse, *op. cit.*, 22-23.

<sup>37</sup> 26 Stat. L., 282, 283; 28 Stat. L., 727, 729. This work, prior to 1890, had been performed by a section of the Division of Statistics.—Greathouse, *op. cit.*, 23, 52-53.

<sup>38</sup> Checklist, 269; Greathouse, *op. cit.*, 26; 26 Stat. L., 282, 285.

<sup>39</sup> 26 Stat. L., 34, 42; Checklist, 250. Investigations into the question of irrigation had been conducted by the department from time to time almost from the date of its establishment. The first formal report on the subject was prepared in 1886.

**Weather Bureau; Office of Fiber Investigations; Office of Road Inquiry.** By act of October 1, 1890, a Weather Bureau was established in the Department of Agriculture, to which were transferred the civilian duties theretofore performed by the Signal Corps with respect to the collection of meteorological data, in accordance with a joint resolution of February 9, 1870.<sup>40</sup> The Section of Fiber Investigations first created in 1890 as a branch of the Division of Statistics, was given an independent status, under the title of Office of Fiber Investigations, on January 1, 1891, and so continued until June 30, 1898, when its work was assigned to the Division of Botany.<sup>41</sup> An Office of Road Inquiry was established on October 3, 1893, under authority of an act of March 3, 1893.<sup>42</sup>

**Divisions of Publications, Soils, Agrostology, and Supply; Appointment Clerk.** Secretary Morton, who assumed the duties of his office on March 6, 1893, introduced a number of changes in the organization of the department. The Division of Illustrations was reorganized as a section of the Division of Records and Editing (later the Division of Publications), and the Document and Folding Room was also placed under this latter division.<sup>43</sup> A Division of Soils was established by order of the Secretary on February 15, 1894, the expenses of which were paid from the appropriation for general expenses of the Weather Bureau, under a clause providing for "investigation and experiments on meteorology in relation to agricultural soils." Specific appropriation for the work of this division was made in an act of March 2, 1895, which also made provision for a Division of Agrostology.<sup>44</sup> The appropriation act of April 25, 1896, omitted provision for the Division of Microscopy which was, accordingly, abolished and its work distributed among other divisions. The act of 1896 made provision for an appointment clerk and a Chief of the Division of Supply in the Office of the Secretary.<sup>45</sup>

<sup>40</sup> 26 Stat. L., 653; 16 Stat. L., 369; Greathouse, *op. cit.*, 47-48; Institute for Government Research, The Weather Bureau (1922).

<sup>41</sup> Checklist, 240; Yearbook of the department of agriculture, 1897, 225-26; Greathouse, *op. cit.*, 33.

<sup>42</sup> 27 Stat. L., 734, 737; Checklist, 266; Institute for Government Research, The Bureau of Public Roads (1923).

<sup>43</sup> Greathouse, *op. cit.*, 28.

<sup>44</sup> Checklist, 269; 28 Stat. L., 264, 274; 727, 735.

<sup>45</sup> Greathouse, *op. cit.*, 29; 29 Stat. L., 99.

**Bureau of Plant Industry; Divisions of Forestry, Chemistry, Soils, Statistics, Entomology, and Biological Survey become Bureaus.** Secretary James Wilson, appointed by President McKinley on March 5, 1897, introduced additional changes in the department, beginning in 1901. A Bureau of Plant Industry was formed by the Secretary in that year, which consolidated the Divisions of Agrostology, Botany, Gardens and Grounds, Pomology, Seeds, and Vegetable Physiology and Pathology under one control. The establishment of this bureau was confirmed by the agricultural appropriation act of March 2, 1901. This act also elevated the Divisions of Forestry, Chemistry, and Soils to the status of bureaus in the department.<sup>46</sup> Similar action was taken with respect to the Divisions of Statistics and Entomology by acts of March 3, 1903, and April 23, 1904, respectively, and the Biological Survey (prior to 1896, Division of Ornithology and Mammalogy) by act of March 3, 1905.<sup>47</sup>

**Division of Foreign Markets; Office of Solicitor; Forest Service; Office of Public Roads; Food and Drug Inspection; Referee Boards.** The Section of Foreign Markets established on March 20, 1894, as a branch of the Division of Statistics, was given the status of a separate division by act of June 3, 1902, but was again joined with the Division of Statistics to form the Bureau of Statistics by act of April 23, 1904.<sup>48</sup> A Solicitor for the department was first provided for in the appropriation act of March 3, 1905, which also changed the title of the Bureau of Forestry to the Forest Service, and the Office of Road Inquiry to the Office of Public Roads.<sup>49</sup> To aid in the administrative work connected with the enforcement of the Pure Food Act of June 30, 1906, an *ex officio* Food and Drug Inspection Board was organized by order of the Secretary of Agriculture, dated April 25, 1907.<sup>50</sup> A Referee Board

<sup>46</sup> Greathouse, *op. cit.*, 48-49, 50-51; 31 Stat. L., 922, 926.

<sup>47</sup> 32 Stat. L., 1147, 1162; 33 Stat. L., 276, 289, 291; 861, 877.

<sup>48</sup> 32 Stat. L., 286, 300; 33 Stat. L., 861, 877; Checklist, 240.

<sup>49</sup> 33 Stat. L., 861, 872, 882. The work of the Forest Service was greatly augmented by the transfer of the vast forest reserves of the United States from the Department of the Interior to the Department of Agriculture by act of February 1, 1905.—33 Stat. L., 628.

<sup>50</sup> 34 Stat. L., 768; Department of Agriculture, Annual reports, 1907, 7; 1912, 244.

was appointed by the Secretary on February 20, 1908, composed of civilians of scientific attainments, which was required to report to the Secretary on the wholesomeness or deleterious character of such foods or such articles in foods as might be referred to them by that officer.<sup>51</sup>

**Insecticide and Fungicide Board; Federal Horticulture Board; Solicitor's Office.** By order of the Secretary of Agriculture, issued on December 22, 1910, an *ex officio* board was organized with the title of Insecticide and Fungicide Board, which was to assist that officer in the enforcement of the Insecticide Act of 1910, approved April 26, 1910.<sup>52</sup> The agricultural appropriation act of May 26, 1910, specifically provided that all of the legal work of the Department of Agriculture should thereafter be performed under the supervision and direction of the Solicitor.<sup>53</sup> Section 12 of an act of August 20, 1912, to regulate the importation of nursery stock and other plants and plant products, authorized the Secretary of Agriculture to appoint a Federal Horticulture Board of five members, chosen from existing bureaus and offices in the Department of Agriculture, to assist him in carrying out the provisions of the act.<sup>54</sup>

**Reorganization, 1914-1915.** Secretary of Agriculture David F. Houston, who assumed office on March 5, 1913, called attention in his first annual report to the need for a reorganization of his department. He pointed out that existing divisional lines were

<sup>51</sup> Department of Agriculture, Annual reports, 1912, 243. Some question was raised as to the authority of the Secretary to organize such a civilian consulting board, and to continue to pay the salaries and expenses thereof out of the lump sum appropriated for "Laboratory, Department of Agriculture," because of the passage of an act of March 4, 1909, which expressly prohibited the use of public monies for the payment of compensation or expenses of any commission, council, or board, unless the creation of such commission or board should have been authorized by law. In an opinion submitted on April 14, 1909, Attorney General Wickersham held that the Secretary was authorized to appoint such consulting experts under the acts of March 4, 1907, May 23, 1908, and March 4, 1909, and to pay their salaries and expenses out of the lump sum appropriation for the conduct of investigations in the Bureau of Chemistry, and, further, that their combination into an advisory board, without power, was within the law.—27 Op. Atty Gen., 301; Department of Agriculture, Annual reports, 1912, 243.

<sup>52</sup> 36 Stat. L., 331; Department of Agriculture, Annual reports, 1911, 807.

<sup>53</sup> 36 Stat. L., 416; Department of Agriculture, Annual reports, 1910, 893.

<sup>54</sup> 37 Stat. L., 315, 319; Department of Agriculture, Annual reports, 1912, 246.

beginning to militate against a desirable flexibility of administration, and had, in some cases, allowed too little latitude in carrying out important projects. "What is needed," he declared, "is a basic plan of coöperation, coördination, and broader grouping of the services of the department, according to the purpose in view, each with a large number of small units, the development of common feeling, and team work all along the line. Experience demonstrates that small units alone, each more or less connected with other units, will yield the greatest results, both in research and in its application." Secretary Houston asked that he be given authority to prepare and report a plan for reorganizing, redirecting, and systematizing the work of the department. Such authority was granted by Congress in the agricultural appropriation act of June 30, 1914.<sup>55</sup>

The plan prepared by Secretary Houston, in accordance with this act, possessed two main features. In the first place, a definite outline or segregation of the three groups of activities performed by the department, namely, regulation, research, and extension, was carried out in each bureau and office. This was a matter of internal concern, and did not require legislative action. In the second place, the work of existing bureaus and offices was enlarged, titles were changed, and new services created. The Office of Farm Management, which had been previously organized as a division of the Bureau of Plant Industry in 1906, under an appropriation "to investigate and encourage the adoption of improved methods of farm management and farm practice" was removed from that bureau and attached to the Secretary's Office.<sup>56</sup> The following changes were made in the titles of existing bureaus indicative of their enlarged activities: Office of Experiment Stations to States Relations Service; and Office of Public Roads to Office of Public Roads and Rural Engineering.<sup>57</sup> The title of the Bureau of Statistics had been changed to the Bureau of Crop Estimates by act of June 30, 1914, in accordance with the recommendation of a committee of that bureau.<sup>58</sup> The title of the Office of Markets, which

<sup>55</sup> Department of Agriculture, Annual reports, 1913, 19; 38 Stat. L., 415, 441.

<sup>56</sup> 34 Stat. L., 669, 680; Department of Agriculture, Annual reports, 1907, 61.

<sup>57</sup> Department of Agriculture, Annual reports, 1914, 42; 1916, 297.

<sup>58</sup> 38 Stat. L., 415, 436; Department of Agriculture, Annual reports, 1914, 235.

had been established on May 16, 1913, in accordance with an act of March 4, 1913, making appropriation to enable the Secretary of Agriculture to acquire and diffuse useful information on subjects connected with marketing and distributing of farm products, was changed to the Office of Markets and Rural Organization.<sup>59</sup> The foregoing changes were submitted to Congress in the estimates of the department for the fiscal year ending June 30, 1916, and received legislative recognition in the act of March 4, 1915.<sup>60</sup>

**Expert on Exhibits; Office of Information; Food and Drug Inspection and Referee Boards Discontinued.** Two new offices in the department had been established prior to the reorganization effected in 1915. The act of March 4, 1913, authorized the appointment of a Special Agent on Exhibits in the Secretary's Office. The title of this officer was changed to Expert on Exhibits by act of June 30, 1914.<sup>61</sup> An Office of Information was established by order of the Secretary in 1913 for the purpose of preparing brief popular statements of facts to be supplied to the country, thereby supplementing the work of the Division of Publications.<sup>62</sup> The Food and Drug Inspection Board and the Referee Board created in 1907 and 1908, respectively, by order of Secretary Wilson, seem to have been discontinued and their work taken over by the Bureau of Chemistry, although no direct evidence has been found to support that conclusion.

**War Activities; Bureau of Markets; Bureau of Public Roads.** The Department of Agriculture performed a large number of special duties during the period of the World War, in coöperation with other departments and administrative agencies. This was especially true with respect to the United States Food Administration, with which the Department of Agriculture was closely associated in carrying out the provisions of the Agricultural Food Products Act of August 10, 1917, and the Food Control Act of the same date. The first of these two acts authorized the appointment by the President, with the consent of the Senate, of two additional

<sup>59</sup> 37 Stat. L., 828, 854; 38 Stat. L., 415, 440; Department of Agriculture, Annual reports, 1913, 21; 1914, 317.

<sup>60</sup> 38 Stat. L., 1086.

<sup>61</sup> 37 Stat. L., 828; 38 Stat. L., 415, 416.

<sup>62</sup> Department of Agriculture, Annual reports, 1913, 34.

assistant secretaries.<sup>63</sup> A National Agricultural Advisory Commission was created jointly by the Secretary of Agriculture and the Food Administrator, in order to secure accurate knowledge of the views of farmers and farm organizations concerning the war activities of these two establishments.<sup>64</sup> The act of March 4, 1917, making appropriations for the Department of Agriculture, changed the title of the Office of Markets and Rural Organization to the Bureau of Markets, and the title of the Office of Public Roads and Rural Engineering was changed to the Bureau of Public Roads by act of October 1, 1918.<sup>65</sup>

**Office of Farm Management and Farm Economics; Division of Publications.** In accordance with the report of a committee on reorganization in the Office of Farm Management, submitted in February, 1919, that office was detached from the Secretary's Office and given the status of a separate branch of the department, under the title of Office of Farm Management and Farm Economics. By order of the Secretary of Agriculture, the Information Office, the Expert on Exhibits, and the motion-picture activities of the department, were transferred from the Office of the Secretary to the Division of Publications. These changes received legislative recognition in the appropriation act of May 31, 1920.<sup>66</sup>

**Directors of Information, Scientific Work, and Regulatory Work; Packers and Stockyards Administration.** The office of Director of Information was created by order of the Secretary in 1920 to exercise general supervision over all the publication and information activities of the department, and to effect a closer correlation of those activities in the several bureaus and offices with those of the Division of Publications.<sup>67</sup> Two additional offices were created by act of March 3, 1921, namely, Director of Scientific Work, and Director of Regulatory Work.<sup>68</sup> Thus the three groups

<sup>63</sup> 40 Stat. L., 273, 274; 276. For a brief review of the war activities of the department, see Department of Agriculture, Annual reports, 1917, 10; 1918, 13-14.

<sup>64</sup> Department of Agriculture, Annual reports, 1918, 11.

<sup>65</sup> 39 Stat. L., 1134, 1162; 40 Stat. L., 973, 1000; Department of Agriculture, Annual reports, 1917, 431; 1918, 373.

<sup>66</sup> 41 Stat. L., 694, 695, 717; Department of Agriculture, Annual reports, 1919, 463; 1920, 38, 383, 569.

<sup>67</sup> Department of Agriculture, Annual reports, 1920, 38.

<sup>68</sup> 41 Stat. L., 1315.

of activities of the department, namely, information, research and investigation, and regulation were coördinated under the general supervision of a Director.<sup>69</sup> Under authority of a deficiency appropriation act of August 24, 1921, to enable the Secretary of Agriculture to enforce the provisions of the Packers and Stockyards Act, approved August 15, 1921, a Packers and Stockyards Administration was created by order of the Secretary of Agriculture in charge of an Assistant to the Secretary.<sup>70</sup>

**Fixed Nitrogen Laboratory ; Office of Exhibits.** Under authority of the National Defense Act of June 3, 1916, which empowered the President to cause investigations to be made as to the best means available for the production of nitrates and other products for munitions of war, a Fixed Nitrogen Laboratory was established by the Secretary of War on March 29, 1919, for the purpose of continuing various researches on nitrogen fixation initiated during the war, to obtain further information necessary for the peace-time utilization of the two government nitrate plants at Sheffield and Muscle Shoals, Ala., and to conduct such other investigations as would further the problem of economically producing nitrogen compounds. On July 1, 1921, this laboratory was transferred by Executive order from the War Department to the Department of Agriculture, in view of the fact that nitrogen fixation is largely an agricultural problem in peace times. The laboratory is located at American University, Washington, D. C., and makes use of buildings and equipment formerly used by the Research Division, Chemical Warfare Service, of the United States Army.<sup>71</sup> On November 16, 1921, the Office of

<sup>69</sup> As early as 1896, a bill was introduced in Congress providing for a director-in-chief of scientific bureaus and investigations in the Department of Agriculture, to serve during good behavior, to act as an Assistant Secretary, and to perform such other duties as the Secretary might direct. This bill, which had the approval of the Secretary and the Assistant Secretary of Agriculture, was the outgrowth of an effort to secure a permanent non-political organization and administration of the various bureaus and divisions engaged in scientific work, and at the same time bring about a more intelligent and effective coöperation than had been theretofore possible. The proposal was supported by a large number of eminent scientists throughout the country, but was defeated.—54 Cong. 1 sess. (1895-96), Congressional Record, Vol. 28, Pt. 6, 5153; 54 Cong. 1 sess., S. rep. 933.

<sup>70</sup> 42 Stat. L., 159; 182, 194; Department of Agriculture, Annual reports, 1922, 567-68.

<sup>71</sup> 39 Stat. L., 166, 215; Department of Agriculture, Annual reports, 1922, 634.

Exhibits was transferred from the Division of Publications to the Secretary's Office, and placed under the direction of the Assistant Secretary.<sup>72</sup>

**Bureau of Agricultural Economics.** Appreciating the importance of the economic, as well as the scientific, problems of agriculture, Secretary Wallace in 1921 directed a thorough investigation and survey of the economic work being carried on in the department, with a view to coördinating all departmental activities of an economic character and enhancing their value to the farmer. An economic council composed of bureau heads in the department was appointed to make recommendations, and the plans drawn up by this council were submitted to a group of experts in agricultural economics called to Washington by the Secretary from different parts of the country. The first step in the direction of the centralization of economic activities performed by the department was effected on July 1, 1921, by the consolidation of the Bureaus of Markets and Crop Estimates—a change authorized by the appropriation act of March 3, 1921. The work of centralization was completed through the creation of a Bureau of Agricultural Economics by act of May 11, 1922, which combined the Office of Farm Management and Farm Economics with the Bureau of Markets and Crop Estimates. Thus all the forces of the department which are engaged in agricultural economic work are merged into one bureau organization, making it now possible to pursue a comprehensive study of economic questions involved in production, marketing, and distribution of farm products, following every step of these processes.<sup>73</sup>

**Reorganization of Extension Work.** A reorganization of the extension activities of the department was proposed by the Secretary of Agriculture in the budget estimates for the fiscal year ending June 30, 1924, which received the sanction of Congress in the appropriation act of February 26, 1923. By the provisions of this statute, the States Relations Service is abolished and its work assigned to three distinct bureaus or services, namely, Extension Service, Office of Experiment Stations, and Bureau of Home Economics. The first two of these services are attached to the Secretary's Office and

<sup>72</sup> *Ibid.*, 629.

<sup>73</sup> 41 Stat. L., 1315, 1341; 42 Stat. L., 507, 531; Department of Agriculture, Annual reports, 1921, 15-24; 1922, 14-15.

are placed in charge of a Director of Extension Service and an Agricultural Chemist and Chief respectively. The third is given the status of a separate bureau in the department in charge of a Chief Home Economics Expert. The Extension Service now includes what were previously the Office of Coöperative Extension Work in the States Relations Service, the Office of Motion Pictures in the Division of Publications, and the Office of Exhibits attached to the Assistant Secretary's Office. Further changes in departmental organization introduced by this act involve the abolition of the Office of Director of Information and the Division of Publications, and the creation of the Offices of Editorial and Distribution Work in charge of Assistants, subject to the immediate direction of the Secretary.<sup>74</sup>

**Important Features in Organization.** Several important aspects of the establishment and organization of the Department of Agriculture deserve special attention. In the first place, the establishment of the Department of Agriculture was due, in large measure, to the persistent efforts of individuals and organizations representing the agricultural interests of the nation. The precedent thus created by Congress, in acceding to the demands of a particular group or class of society, was effectively used by the labor interests to secure the establishment of a Bureau and later a Department of Labor, and by the commercial and manufacturing interests to secure a Department of Commerce. In the second place, the organization of the Department of Agriculture furnishes an admirable illustration of the departmental system of administrative organization. The appointment and removal of all of the important officers of the department, except the Assistant Secretary and the Chief of the Weather Bureau, is vested in the Secretary, and in only two instances, namely, in the creation of the Bureau of Animal Industry in 1884, and in the transfer of the Weather Bureau from the War Department to the Department of Agriculture in 1891, has Congress sought, by specific legislation, to organize the bureaus and offices in the department and to prescribe their duties. Congressional approval, through the granting of appropriations, has quickly followed the creation of new offices and the reorganization of existing bureaus and divisions.

<sup>74</sup> The Budget, 1924, 99-112, 225; Pub. Act No. 446, 67th Congress, approved Feb. 26, 1923; Department of Agriculture, Annual reports, 1922, 28, 36-37.

Finally, the Department of Agriculture is probably more nearly free from the evils of political appointments than any other department of the government. All of the officers of the department, except the Secretary, the Assistant Secretary, the Chief of the Weather Bureau, and the Solicitor are in the classified service. The expert scientific and technical knowledge which the bureau chiefs and other important officers must have for the proper performance of their duties, in addition to the value which long and certain tenure gives to their services, has operated to remove these positions almost entirely from the domain of politics. While the Secretary of Agriculture, as a member of the Cabinet, must necessarily be in political accord with the President, it is interesting to note that Secretary of Agriculture James Wilson served from March 5, 1897, to March 5, 1913, as the head of that department. Of course, no party changes occurred during that time, but even so, his long period of service far exceeds that of any other department Secretary.

Several important reorganizations have been effected in the department. Beginning in 1901, the divisional basis of organization which had existed in the department since its creation in 1862, was gradually abandoned, giving way to the bureau system inaugurated by Secretary Wilson, with the approval of Congress. Again in 1915, a reorganization was effected at the instance of Secretary Houston, which was chiefly concerned with the regrouping and reapportionment of the activities of the department, without materially altering its existing organization. The creation of the offices of Director of Information, Director of Scientific Work, and Director of Regulatory Work, furnished supervisory and coördinating agencies for three distinct groups of activities in which each bureau of the department, to a greater or less extent, is engaged, namely, regulation, research, and education or information. Finally, the recent establishment of a Bureau of Agricultural Economics and the Office of Director of Extension has served further to centralize and unify two distinct and important groups of activities performed by the department.

## CHAPTER XIX

### THE DEPARTMENTS OF COMMERCE AND LABOR

Because of their comparatively recent origin and their establishment as a joint department in 1903, it seems advisable to treat the administrative organization of the Department of Commerce and of the Department of Labor in a single chapter. Problems of commercial regulation and the promotion of the interests of commerce and manufactures confronted the national government of the United States from the beginning, but it was not until after the Civil War that the growth of national labor organizations forced upon Congress the necessity of recognizing the interests of labor in the administration of government. The discussion of administrative organization in these two departments will be preceded by a brief historical account of the factors which resulted in their establishment.

**Proposals for an Executive Department to Represent the Interests of Commerce and Labor.** Several proposals made during the constitutional convention of 1787 with respect to the establishment and organization of the administrative branch of the national government indicate that at least a few of the early statesmen were cognizant of the problems of commercial regulation which would follow the formation of the Federal Union. Thus Gouverneur Morris, in submitting his plan for a Council of State, proposed that one of the members of that council should be a Secretary of Commerce and Finance, a part of whose duties should be "to recommend such things as may in his judgment promote the commercial interests of the United States." This plan also provided for a Secretary of Domestic Affairs, to have supervision of agriculture, manufactures, roads, and navigation. Reference has been made in a foregoing chapter to the letter written by Commodore John Paul Jones to the Marquis de Lafayette concerning the Constitution, in which he expressed the opinion that, "as commerce must be our great reliance, it would not be amiss to create . . . a Ministry of Commerce."<sup>1</sup>

<sup>1</sup> Farrand, Records of the federal convention, II, 342; *Supra*, 84, 89.

As we have seen, no provision was made in the Constitution, as it was finally drawn up, for the establishment of executive or administrative departments. Congress, in creating the first departments in 1789, failed to make any definite provision concerning commerce and industry. Representative Vining's proposal for a Home Department, submitted on July 23, 1789, the duties of which should include that of reporting "to the President plans for the protection and improvement of manufactures, agriculture, and commerce," was defeated.<sup>2</sup> President Washington in his first annual message to Congress briefly referred to this subject as follows: "The advancement of agriculture, commerce, and manufactures by all means will not, I trust, need recommendation. . . ." He did not offer any definite suggestions as to the action Congress might take, nor did his recommendation lead to the introduction of any positive measures in Congress, other than those concerning the promotion of agriculture, which have been noted in a preceding chapter.<sup>3</sup>

The first Secretary of the Treasury, Alexander Hamilton, gave special consideration to the commerce and industries of the country, and in his well-known Report on Manufactures, definitely proposed the establishment of a board in the national government for the promotion of arts, agriculture, manufactures, and commerce.<sup>4</sup> No further consideration was given to the subject until it was broached in connection with the proposals concerning the establishment of a Home Department. A resolution was introduced in the House on March 3, 1825, which proposed that a department to be denominated "the Home Department should be established for the purpose of superintending whatever may relate to the interests of agriculture and manufactures, the promotion of the progress of science and the arts, the intercourse and trade between the several states by roads and canals." This resolution, however, was promptly defeated.<sup>5</sup> Notwithstanding this and other proposals leading up to the establishment of the Department of the Interior, which gave recognition to the business interests of the country, very few of the commercial and industrial agencies were put under the control of that department, most of them remaining under the

<sup>2</sup> Annals of Congress, I, 666-69; *Supra*, 98.

<sup>3</sup> Messages and papers of the presidents (ed. Richardson), I, 66.

<sup>4</sup> American State Papers, Finance, I, 144.

<sup>5</sup> 18 Cong. 2 sess. (1824-25), Register of Debates, I, 740.

jurisdiction of the Treasury Department which, since 1789, had become the principal agency of the national government through which a limited supervisor of the commercial and industrial life of the nation was administered.<sup>6</sup>

Beginning in 1860, a large number of bills were introduced in Congress for the establishment of one or more additional departments. The recognition accorded to the interests of agriculture by the creation of the Department of Agriculture in 1862 gave additional impetus to such proposals.<sup>7</sup> Commercial conventions at Detroit in 1865, and at Boston in 1868, and the National Board of Trade in 1874 memorialized the Congress for the establishment of a Department of Commerce, in order that the rapidly increasing volume of capital invested in commerce and manufactures might be the subject of governmental aid and supervision.<sup>8</sup>

**Bureau of Labor in Interior Department.** Meanwhile the phenomenal growth of labor organizations, especially the Knights of Labor, forced upon Congress the necessity of granting recognition to labor in the administrative branch of the national government. Beginning in 1871, several bills were introduced for the purpose of establishing a bureau of labor or of labor statistics.<sup>9</sup> These measures were actively supported by the representatives of labor, and Congress finally passed a bill, which was approved by the President on June 27, 1884, establishing a Bureau of Labor in the Department of the Interior. It was the duty of this bureau, which was placed in charge of a Commissioner appointed by the President, with the consent of the Senate, to "collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity." The Secretary of the Interior was authorized to appoint a chief clerk for the bureau, upon the recommendation of the Commissioner.<sup>10</sup>

<sup>6</sup> *Supra*, 152-54, 156-57, 271-72, 275.

<sup>7</sup> For a bibliography of legislative proposals anticipating the Department of Commerce and Labor, see Organization and law of the department of commerce and labor (hereinafter cited as "Organization"), 13-21 (1904).

<sup>8</sup> *Ibid.*, 11.

<sup>9</sup> *Ibid.*, 13-16.

<sup>10</sup> 23 Stat. L., 60; Smith, The national bureau of labor, *Political Science Quarterly*, I, 437 *et seq.* (September, 1886).

**Proposal for a Commission of Labor.** The function of the Bureau of Labor, as defined in the act of 1884, was purely statistical. Serious industrial disputes involving important commercial and manufacturing enterprizes in the United States, among the most notable of which was the Southwestern Railroad strike in 1886, led President Cleveland to recommend in a special message to Congress dated April 22, 1886, the creation of a commission of labor, consisting of three members, who should be regular officers of the government, "charged among other duties with the consideration and settlement, when possible, of all controversies between labor and capital." "The establishment by Federal authority of such a bureau," declared the President, "would be a just and sensible recognition of the value of labor and of its right to be represented in the departments of the Government." He suggested that this commission could easily be ingrafted upon the existing Bureau of Labor "by the addition of two more commissioners and by supplementing the duties now imposed upon it by such other powers and functions as would permit the commissioners to act as arbitrators when necessary between labor and capital. . . ." This project, in spite of executive influence, failed to meet the approval of Congress.<sup>11</sup>

**Department of Labor, 1888.** The efforts on the part of the agricultural interests of the nation to induce Congress to establish a Department of Agriculture in charge of a Secretary of Cabinet rank, which reached their fruition in 1889, encouraged the representatives of organized labor to demand similar legislative action with respect to a department of labor. As early as December 21, 1885, a bill was introduced in the House to establish an executive department of labor, with a secretary of labor, which was referred to the Committee of Labor, but never reported back to the House.<sup>12</sup> Congress, in a partial attempt to meet the demands of labor, passed a bill to establish a separate Department of Labor, in charge of a

<sup>11</sup> Messages and papers of the presidents, VIII, 394; 49 Cong. 1 sess. (1885-86), Congressional Record, Vol. 17, Pt. 4, 3728-29, 3760-65. For a brief historical account of the efforts looking toward the establishment of a department of labor, see Wright, *The working of the department of labor*, Monographs on Social Economics, I, 2-3 (1901); also *Department of Labor, Annual reports*, 1920, 13-17.

<sup>12</sup> 49 Cong. 1 sess., Congressional Record, Vol. 17, Pt. 1, 384.

Commissioner appointed by the President, with the consent of the Senate, which was approved on June 13, 1888. The general design and duties of this department were "to acquire and diffuse among the people of the United States useful information on subjects connected with labor, in the most general and comprehensive sense of that word, and especially upon its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity." The act provided for a chief clerk, a disbursing clerk, special agents, clerks, messengers, and laborers in the new department, and directed that upon its organization, the Bureau of Labor in the Department of the Interior should cease to exist.<sup>13</sup>

**Proposals for a Joint Department of Commerce and Labor.** Returning to the subject of a department of commerce, we find that frequent proposals were submitted to Congress during the period from 1880 to 1900 looking toward the establishment of such a department, although the movement gave way temporarily to permit the commerce committees of Congress to devote their attention to problems of railroad transportation. The efforts exerted in this direction resulted in the establishment of the Interstate Commerce Commission in 1887.<sup>14</sup> Two important factors contributed to the movement in favor of the creation of a new department at the beginning of the twentieth century. In the first place, the whole industrial situation of the nation was intensified and complicated by the rapid advances in the direction of industrial combinations. Secondly, the growing importance of labor as a force in the field of industry which demanded recognition was emphasized by the strike of the anthracite coal miners in 1902.<sup>15</sup>

President Roosevelt, in his first annual message to Congress dated December 3, 1901, devoted especial attention to the social and industrial conditions which confronted the nation at that time, and as one of the means for bettering those conditions, he advocated the creation of a "Cabinet officer, to be known as Secretary of Commerce and Industries." He proposed that it should be the

<sup>13</sup> 25 Stat. L., 182; 50 Cong. 1 sess. (1887-88), Congressional Record, Vol. 19, Pt. 3, 2132, 2264, 2317; Pt. 4, 3096, 3140, 3549; Pt. 5, 4507, 4744, 4768.

<sup>14</sup> Organization, 11-12, 14-21.

<sup>15</sup> Learned, The president's cabinet, 355 (1912).

province of this officer "to deal with commerce in its broadest sense; including among many other things whatever concerns labor and all matters affecting the great business corporations and our merchant marine."<sup>16</sup> The President's message, together with the two factors noted above, awakened Congress to the need for a department to represent the joint interests of Commerce and Labor. Several bills providing for a new department, under various titles, were introduced in the two Houses of Congress at the beginning of the Fifty-seventh Congress in December, 1901.<sup>17</sup> One of these measures, which was presented by Senator Nelson on December 4, and which provided for a department of commerce, was destined, after a long period of debate and after undergoing several changes, to receive the approval of Congress and the President.

**Labor Organization Opposes Joint Department.** According to the terms of this bill, the Department of Labor was to be merged into the new department as the Bureau of Labor, in charge of a Commissioner, but subject to the direction of the Secretary of Commerce. This plan was approved by one faction of organized labor, known as the Knights of Labor, on the ground that it was a step toward the creation of an executive department of labor having at its head a secretary of Cabinet rank. The rapidly growing American Federation of Labor, however, opposed the measure, declaring that it reduced the Department of Labor to virtually its original status as a bureau in the Department of the Interior. This latter organization urged the immediate establishment of a separate department of labor in addition to the Department of Commerce. Congress did not see fit to grant these demands, other than to change the title of the new department to the Department of Commerce and Labor.

**Department of Commerce and Labor, 1903; Bureaus Transferred and Created.** The bill, which had been referred to the Senate Committee on Commerce, was reported to the Senate with certain amendments on January 9, 1902, and after several days

<sup>16</sup> 57 Cong. 1 sess. (1901-02), H. ex. doc. 1, xviii.

<sup>17</sup> 57 Cong. 1 sess., Congressional Record, Vol. 35, Pt. 1, 51, 53, 95, 125, 128. Cf. Organization, 21.

of debate in which additional amendments were adopted including the one changing the title to the Department of Commerce and Labor, passed the Senate on January 28. The measure was received in the House and referred to the Committee on Interstate and Foreign Commerce on January 30, 1902. The report of this committee was not submitted until January 6, 1903. The House committee proposed practically a new bill, which differed mainly from the Senate bill in the matter of the bureaus which should be embraced in the new department. It was passed by the House on January 17, and the two measures were sent to a committee of conference. The conference report was agreed to by the House on February 10, and by the Senate on the following day, and received the President's approval on February 14, 1903.<sup>18</sup>

The act of 1903 provided for an executive department to be known as the Department of Commerce and Labor, in charge of a Secretary and an Assistant Secretary appointed by the President, with the consent of the Senate. Provision was also made for a chief clerk, a disbursing clerk and such other clerical assistants as might from time to time be authorized by Congress. It was made the province and duty of this department to "foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, the labor interests, and the transportation facilities of the United States." The following offices, bureaus, and divisions were transferred to the new department: The Lighthouse Board, the Coast and Geodetic Survey, the Steamboat-Inspection Service, the Bureau of Navigation, the National Bureau of Standards, the Commissioner General of Immigration, and the Bureau of Statistics from the Treasury Department; the Census Office from the Department of the Interior; the Department of Labor, and the Office of the Commissioner of Fish and Fisheries, previously established outside of any of the executive departments; and the Bureau of Foreign Commerce from the State Department, which was consolidated with the Bureau of Statistics, under the title of the latter.<sup>19</sup> Two new

<sup>18</sup> 57 Cong. 1 sess., Sen. rep. 82; 57 Cong. 2 sess. (1902-03), H. rep. 2970; 57 Cong. 1 sess., Congressional Record, Vol. 35, Pt. 1, 912; Pt. 2, 1051; 57 Cong. 2 sess., *Ibid.*, Vol. 36, Pt. 1, 549. 858, 929-30, 945-46; Pt. 2, 1388, 1446, 1465-67, 2008, 2036; Pt. 3, 2188. Cf. Organization, 419-658.

<sup>19</sup> The office of Commissioner of Fish and Fisheries had been established by joint resolution of Congress approved February 9, 1871; 16 Stat. L., 594.

bureaus were established in the department, namely, the Bureau of Manufactures and the Bureau of Corporations in charge, respectively, of a Chief and a Commissioner, to be appointed by the President, with the consent of the Senate. All of the officers, clerks, and employees of the several bureaus and offices enumerated in the act were likewise transferred to the new department, and the act specifically vested the Secretary of Commerce and Labor with "jurisdiction and control of the departments, bureaus, offices, and branches of the public service" in his department.<sup>20</sup>

**Organization of the New Department.** The first step in the organization of the new department was the appointment, by the President, of George B. Cortelyou as the first Secretary of Commerce and Labor on February 16, 1903. The appointment was confirmed by the Senate on the same day, and the work of organization was immediately undertaken by the Secretary. A Commissioner of Corporations was appointed on February 17, and the Bureau of Corporations was organized on February 25, when the Commissioner took the oath of office. A chief clerk and a disbursing clerk were also appointed by the Secretary. On July 1, 1903, the several bureaus and offices enumerated in the act of February 14 were transferred to the new department, while an order issued by the Secretary of Commerce and Labor on the same date changed the titles of the following bureaus and offices: Census Office to Bureau of the Census; National Bureau of Standards to Bureau of Standards; Office of Commissioner of Fish and Fisheries to Bureau of Fisheries; and Department of Labor to Bureau of Labor.<sup>21</sup>

<sup>20</sup> 32 Stat. L., 825. The authority vested in the Secretary by this act over the work of the bureaus and offices in the department was questioned by the Director of the Census Office, who had been declared by the Attorney General in 1899 as substantially independent of the Secretary of the Interior. Appeals were taken to the Solicitor of the Department, the Attorney General, and the Comptroller of the Treasury, who rendered somewhat conflicting opinions as to the extent of the Secretary's authority over this office. The predominant control of the Secretary was gradually asserted, however, without any change in the law establishing the Census Office.—Cf. 22 Op. Atty. Gen., 413; 24 Op. Atty. Gen., 697; 25 Op. Atty. Gen., 1; 11; 228; 29 Op. Atty. Gen., 247; 10 Dec. Comp. Treas., 577; Willcox, The development of the American census office since 1890, *Political Science Quarterly*, XXIX, 449-56 (September, 1914).

<sup>21</sup> Organization, 22; Checklist of U. S. public documents, 1789-1909 (hereinafter cited as "Checklist"), 317, 330, 331, 338, 362.

*Division of Alaskan Fisheries.* In accordance with a provision in the act of 1903 transferring to the Secretary of Commerce and Labor the supervision of Alaskan Fisheries conferred upon the Secretary of the Treasury by act of July 27, 1868, and March 3, 1899, that portion of the Special Agents Division of the Treasury Department previously engaged in this work was transferred to the Department of Commerce and Labor on July 1, 1903, and organized as the Division of Alaskan Fisheries. A portion of the work of this division was transferred to the Bureau of Fisheries on December 5, 1905, by order of the Secretary, and a later order issued on December 28, 1908, abolished the division entirely, transferring its personnel and remaining duties to the Bureau of Fisheries.<sup>22</sup>

*Divisions of Publications, Appointments, and Supplies; Office of Solicitor.* Preliminary steps looking toward the organization of a Division of Publications had been taken in April, 1903, by the detail of a clerk from the Bureau of Statistics to take charge of that work, although the division was not formally organized until July 1, 1903. The name of this division was originally the Division of Printing, but by order of the Secretary, dated November 24, 1908, the name was changed to the Division of Printing and Publications, and a later order issued on December 31, 1909, directed that after January 1, 1910, the name should be changed to the Division of Publications.<sup>23</sup> An Appointment Division was organized in February, 1904, as a part of the Secretary's Office, and the office of Chief of Appointment Division was created by act of June 22, 1906.<sup>24</sup> The office of Solicitor for the Department of Commerce and Labor was created by act of March 4, 1904.<sup>25</sup> A Division of Supplies was also established in 1904, in charge of a clerk in the Secretary's Office. Provision was made in an act of June 22, 1906, for two chiefs of divisions, one of whom was placed in charge of the Division of Supplies, but the title of Chief of

<sup>22</sup> 15 Stat. L., 240; 30 Stat. L., 1279; 32 Stat. L., 825, 828; Organization, 35; Checklist, 316.

<sup>23</sup> The department of commerce, 1915, 10-20; Checklist, 375.

<sup>24</sup> The department of commerce, 19; Department of Commerce and Labor Annual reports, 1905, 10-11; 34 Stat. L., 389, 442.

<sup>25</sup> 33 Stat. L., 85, 135.

Division of Supplies was not recognized by statute until the act of March 4, 1911.<sup>26</sup>

*Bureau of Manufactures, 1905; Bureau of Immigration and Naturalization; Bureau of Lighthouses.* The Bureau of Manufactures, which was created by the act of 1903, was not organized until February, 1905, because of the insufficiency of the appropriations provided by Congress for its support.<sup>27</sup> The title of the Immigration Bureau was changed to the Bureau of Immigration and Naturalization by act of June 29, 1906, which placed all matters concerning the naturalizing of aliens under the jurisdiction of that bureau.<sup>28</sup> By act of June 17, 1910, providing for an entire reorganization of the Lighthouse Service, the Lighthouse Board, which had been in charge of that service since 1852, was abolished and in its place was created a Bureau of Lighthouses, in charge of a Commissioner appointed by the President.<sup>29</sup>

*Children's Bureau; Bureau of Foreign and Domestic Commerce.* A Children's Bureau, in charge of a chief appointed by the President, with the consent of the Senate, was established in the Department of Commerce and Labor by act of April 9, 1912. This bureau was directed to investigate and report to the Secretary of Commerce and Labor "upon all matters pertaining to the welfare of children and child life among all classes of people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation

<sup>26</sup> Secretary of Commerce and Labor, Annual report, 1904, 11-12; 34 Stat. L., 389, 442; 36 Stat. L., 1170, 1226.

<sup>27</sup> Department of Commerce and Labor, Annual reports, 1905, 15. The first provision for the Chief and clerical force of this bureau was made in the appropriation act of March 4, 1904.—33 Stat. L., 85, 136.

<sup>28</sup> 34 Stat. L., 596; Department of Commerce and Labor, Annual reports, 1907, 7.

<sup>29</sup> 36 Stat. L., 534, 537. Two characteristics of the Lighthouse Service, as it was organized prior to 1910, should be noted: First, the administrative control of that service was vested in a board instead of a single-headed bureau; and, second, the membership of the board and the field force of directors, included a large number of army and navy officers. "In respect to both of these features the system worked badly in practice."—Cf. Commission on Economy and Efficiency, Reports, 62 Cong. 2 sess. (1911-12), H. ex. doc. 670, 51.

affecting children in the several States and Territories.”<sup>30</sup> Upon the recommendation of a “committee on statistical reorganization” appointed by the Secretary of Commerce and Labor on September 20, 1907, to inquire into and report upon the statistical work of the department, the Bureau of Manufactures and the Bureau of Statistics were consolidated into one bureau, with the title of Bureau of Foreign and Domestic Commerce, by act of August 23, 1912.<sup>31</sup>

**Department of Labor.** As we have noted in connection with the establishment of the Department of Commerce and Labor, the representatives of organized labor, especially the American Federation of Labor, strenuously opposed the consolidation of the interests of commerce and labor in one department. They continued to advocate the establishment of a separate executive department to represent the interests of the wage-workers, and their demands finally found favor in the Sixty-second Congress. An act was passed, and approved on March 4, 1913, which established an executive Department of Labor, in charge of a Secretary appointed by the President, with the consent of the Senate, and transferred to that department all of the functions and services of the Department of Commerce and Labor which pertained to the interests of labor. The name of the latter department was changed to the Department of Commerce. The following bureaus and divisions were thus transferred: Bureau of Labor, the name of which was changed to the Bureau of Labor Statistics; Children’s Bureau;

<sup>30</sup> 37 Stat. L., 79; Department of Commerce and Labor, Annual reports, 1912, 74.

<sup>31</sup> Department of Commerce and Labor, Annual reports, 1907, 67; 1909, 35; The department of commerce, 42; 37 Stat. L., 360, 407. Section 4 of the act of 1903 authorized the Secretary of Commerce and Labor to rearrange the statistical work of the bureaus and offices confided to his department and to consolidate any of the statistical bureaus and offices transferred to such department. The Comptroller of the Treasury held, however, that this grant of authority did not extend to the abolition of the Bureau of Manufactures created by the act of 1903, and this opinion was confirmed by the Attorney General.—32 Stat. L., 825, 827; Department of Commerce and Labor, Annual reports, 1909, 35; 27 Op. Atty. Gen., 542.

and Bureau of Immigration and Naturalization, its title being altered to Bureau of Immigration.<sup>32</sup>

*Bureau of Naturalization; Office of Solicitor.* The former Division of Naturalization of the Bureau of Immigration was raised to the status of a separate bureau, under the title of Bureau of Naturalization. The act also provided for a Solicitor of the Department of Justice for the Department of Labor.<sup>33</sup>

**The Department of Commerce.** Except for the transfer of the three bureaus enumerated above to the Department of Labor, the organization of the Department of Commerce was not materially altered by the act of 1913. The Bureau of Corporations of that department was abolished on March 16, 1915, and all of its clerks and employees transferred to the Federal Trade Commission, in accordance with the act of September 26, 1914, creating that commission.<sup>34</sup> Except for certain alterations in the internal arrangement of several bureaus in the department, no further changes in the administrative organization of the Department of Commerce have occurred since 1914. While the bureaus of the department actively coöperated with other departments and establishments in various phases of war work, most of the special lines of activity relating to commerce and industry in which the government was engaged during the war period were performed by special war agencies which were outside of that department.<sup>35</sup>

<sup>32</sup> 37 Stat. L., 736. For a description of the history, present activities and organization of the Bureau of Labor Statistics, see Weber, The bureau of labor statistics, U. S. department of labor, Bul. of U. S. Bureau of Labor Statistics No. 319, Misc. Ser., 1922.

<sup>33</sup> The Division of Naturalization had been established in the Bureau of Immigration and Naturalization on July 14, 1906, by order of the Secretary of Commerce and Labor, under authority of Sections 1 and 2 of the act of June 29, 1906.—34 Stat. L., 596; Department of Commerce and Labor, Annual reports, 1907, 187. A Division of Information had also been established by act of February 20, 1907, with the duty of supervising the proper distribution of aliens throughout the country and informing all workers as to the conditions of the labor market generally.—34 Stat. L., 898, 909; 1295, 1329; Department of Commerce and Labor, Annual reports, 1908, 25.

<sup>34</sup> 38 Stat. L., 717, 718; Department of Commerce, Annual reports, 1914, 49; 1915, 9; The department of commerce, 16.

<sup>35</sup> For an account of the war work of the department, see the reports of the several bureaus in the annual reports of the Department of Commerce for 1917 and 1918.

*Reorganization of Bureau of Foreign and Domestic Commerce.* Secretary of Commerce Herbert Hoover, who assumed office on March 5, 1921, has devoted special attention to the organization and distribution of activities of the department, and has recommended to Congress a number of changes. He is chiefly concerned with the Department of Commerce as an active aid to the commercial and industrial interests of the nation, and consequently has sought to reorganize the Bureau of Foreign and Domestic Commerce so that its wealth of statistical information might be accurately brought to the attention of business men throughout the country. After conferences with various representatives of commerce and industry upon the need for reorganization of the department's foreign trade service, it was determined that the Bureau of Foreign and Domestic Commerce should include, in addition to its regional divisions charged with making surveys of general economic conditions in foreign countries, divisions representing the more important commodity and specialty lines.

With the approval of Congress, given in a deficiency appropriation act of June 16, 1921, fifteen commodity divisions were created, namely, agricultural implements, automotive, electrical equipment, foodstuffs, fuel, hide and leather, industrial machinery, iron and steel, lumber, paper, rubber, shoe and leather manufactures, specialties, textiles, and transportation. These divisions not only organize and direct the collection of information abroad concerning their commodities but also set up, with the active help of the industries themselves, machinery for the distribution of such information. By the same act Congress made provision for two Assistant Directors and an Expert on Foreign Commercial laws in the Bureau of Foreign and Domestic Commerce.<sup>36</sup>

*Bureau of Customs Statistics; Division of Domestic Commerce.* An act of January 5, 1923, consolidating the work of collecting, compiling, and publishing statistics of foreign commerce, transferred the Bureau of Customs Statistics, located at the customhouse in New York, from the Treasury Department to the Department of Commerce and authorized its consolidation with the Division of Statistics in the Bureau of Foreign and Domestic Com-

<sup>36</sup> 42 Stat. L., 29, 47; Secretary of Commerce, Annual report, 1921, 73-74; 1922, 4, 96-108; *New York Times*, April 28, 1921.

merce. A Section of Customs Statistics is still maintained in the customhouse in New York, as a unit of the Division of Statistics in the bureau of Foreign and Domestic Commerce. A Division of Domestic Commerce has recently been organized in this bureau, which will provide coördinating facilities for the constructive activities of trade associations which lie in forty or more different phases of the development of greater efficiency in domestic commerce.<sup>37</sup>

*Division of Building and Housing; Advisory Board on Housing Problems; Advisory Committee on Fisheries.* The establishment of a Division of Building and Housing in the Bureau of Standards was approved by Congress, upon the recommendation of the Secretary of Commerce, in the deficiency appropriation act of June 16, 1921, which authorized the expenditure of \$50,000 by the Bureau of Standards "to encourage, improve, and cheapen construction and housing." An advisory board composed of seven engineering experts was organized by the Secretary to aid the department in solving the national housing problem. The appointment of an Advisory Committee consisting of eight members to visit the Bureau of Fisheries at such times as the Secretary might request, and to report to the latter on the condition and needs of the service was authorized by act of June 16, 1921.<sup>38</sup>

*Dominant Feature of Administrative Organization.* The outstanding feature of the administrative organization of the Department of Commerce is the grouping together of a number of well-organized bureaus, all more or less intimately related to commerce and industry, under the general supervision and direction of the Secretary of Commerce. While there is some evidence to indicate that Congress, in organizing this department, sought to give the Secretary a large measure of supervision and control over the organization and work of the several bureaus and offices, without regard to their status prior to their transfer to that department, this authority is not as complete as that possessed by the heads of some other departments, notably the Department of State and the

<sup>37</sup> 67 Cong., Public Acts No. 379, Jan. 5, 1923, and No. 543, Mar. 4, 1923; *Washington, D. C., Post*, July 6, 1923.

<sup>38</sup> 42 Stat. L., 29, 48; *Washington, D. C., Herald*, July 24, 1921; Secretary of Commerce, Annual report, 1922, 167-68; *New York Times*, May 16, 1921;

<sup>41</sup> Stat. L., 29, 64.

Department of Agriculture.<sup>39</sup> The addition of several existing bureaus and agencies to the Department of Commerce, as one of the features of the present proposals for administrative organization, will be noted in a later chapter.

**The Department of Labor.** Administrative problems connected with the organization of the Department of Labor under the act of 1913 were chiefly confined to the Secretary's Office, as the several bureaus transferred from the Department of Commerce and Labor retained their internal organization and sufficient appropriations had previously been provided for their maintenance. Congress made no provision in the organic act of 1913 for salaries and equipment in the Secretary's Office. The matter of salaries was remedied by act of May 1, 1913, which made provision for the Secretary, Assistant Secretary, Solicitor, chief clerk, disbursing clerk, and secretaries to the Secretary and Assistant Secretary.

*Appointment Division; Division of Publications and Supplies.* This act also directed the Secretary of Commerce to transfer to the Department of Labor all persons formerly employed in the divisions of his office on work connected with the bureaus transferred to the new department. Such transfer permitted the organization of an Appointment Division and a Division of Publications and Supplies in the Office of the Secretary of Labor. A deficiency appropriation act of October 22, 1913, made provision for a chief of division and a clerk, who was given the title of Appointment Clerk, in addition to a requisite number of clerks and messengers in the Secretary's Office.<sup>40</sup>

<sup>39</sup> In an opinion rendered to the Secretary of Commerce and Labor by Acting Attorney General Hoyt on July 14, 1903, that officer held that the Census Office, which had been declared by the Attorney General in 1899 to be nominally a part of the Interior Department, was, by the act of 1903, placed under the jurisdiction and control of the Department of Commerce and Labor, and was made an integral part of that department. As noted in connection with the creation of the Bureau of Foreign and Domestic Commerce, however, the Attorney General confirmed an opinion rendered by the Comptroller of the Treasury to the effect that the authority of the Secretary of Commerce and Labor over the bureaus of his department and his specific power to consolidate any of the statistical bureaus and offices transferred to his department did not extend to the consolidation of bureaus, one of which was created by the act of 1903.—27 Op. Atty. Gen., 542; *Supra*, 405n.

<sup>40</sup> 38 Stat. L., 1-2; 208, 225; Department of Labor, Annual reports, 1920, 19-22.

*Division of Conciliation; News-Release Office.* Section 8 of the act of 1913 creating the Department of Labor authorized the Secretary of Labor "to act as mediator and to appoint commissioners of conciliation in labor disputes whenever, in his judgment, the interest of industrial peace may require it to be done." No other provision having been made by Congress for organizing a bureau or statutory division for the purpose of administering the power thus conferred, the Secretary of Labor organized a Division of Conciliation in his office by drawing upon the bureaus of the department for the necessary personnel. Specific appropriation to pay the expenses of commissioners appointed by the Secretary of Labor was voted in an act of October 22, 1913, and compensation for such commissioners was allowed in an act of April 6, 1914.<sup>41</sup> A News-Release Office was established by departmental order dated June 12, 1914, in the Secretary's Office, through which all information concerning any branch of the department was required to pass before being released for publication.<sup>42</sup> No further changes in the organization of the department were effected until after the entrance of the United States into the World War.

*Decentralized Labor Administration During First Year of World War.* The declaration of war in 1917 found the existing organization of the Department of Labor unable to cope successfully with the serious labor problems which soon confronted the national government. Each of the several departments and establishments engaged in production work found it necessary to organize special agencies to handle its own problems of labor administration. Thus, in the War Department, industrial relations sections or branches were organized in the Production Division of the Ordnance Bureau, the Quartermaster's Bureau, and the Aircraft Production Board, in addition to special commissions, such as the Harness and Saddlery Adjustment Commission, and the Cantonment Adjustment Division. Similar sections, branches, and commissions were established by the United States Shipping Board, the Emergency Fleet Corporation, the United States Railroad Administration, and the United States Fuel Administration.<sup>43</sup> This system of decentralized

<sup>41</sup> 38 Stat. L., 208, 225; 312, 325; Institute for Government Research, *The Division of Conciliation* (1923).

<sup>42</sup> Department of Labor, *Annual reports*, 1920, 24.

<sup>43</sup> How the government handled its labor problems during the war, 21-45 (1919). (Handbook prepared by the Bureau of Industrial Research.)

labor adjustment and control prevailed throughout the first year of the war.

*President's Mediation Commission.* On September 19, 1917, President Wilson, upon the recommendation of the Committee on Labor of the Council of National Defense, appointed a commission of five members to investigate the causes of labor controversies in the Southwest and Northwest which had seriously impeded the output of such war materials as copper, lumber, and oil, and, where possible, to adjust the difficulties. Although Secretary of Labor Wilson was made chairman of this commission, which became known as the President's Mediation Commission, it was in no sense a branch of the Department of Labor.<sup>44</sup>

*Secretary of Labor as War Labor Administrator.* The report of this commission, submitted on January 9, 1918, was to a large extent responsible for the subsequent extension of the functions of the Department of Labor and the creation of a large number of additional subdivisions in that department for their administration. The report, after describing the causes of existing labor difficulties, recommended the establishment of a central labor administration and the adoption of a consistent labor policy. The Council of National Defense had also called attention in a report submitted early in January, 1918, to the need for a unification of war labor administration. In accordance with these recommendations, the Secretary of Labor was designated as Labor Administrator by an Executive order issued on January 4, 1918, with authority to establish a general direction and control over the several administrative agencies concerned with labor problems.<sup>45</sup>

*Advisory Council; War Labor Services.* To assist the Secretary of Labor in the exercise of this authority, that officer organized an Advisory Council on January 16, 1918, composed of seven members representing employers, wage-workers, and the general public. This council submitted a program of organization on January 28, 1918,

<sup>44</sup> Department of Labor, Annual reports, 1918, 12-28; Willoughby, Government organization in war time and after, 211-13 (1919); Official Bulletin No. 231 (February 11, 1918), 9-14.

<sup>45</sup> Willoughby, *op. cit.*, 213-17, 223-25; Watkins, Labor problems and labor administration in the United States during the World War, University of Illinois, Studies in the Social Sciences, Vol. VIII, No. 4, 158-59 (1919); Marshall, The war labor program and its administration, *Journal of Political Economy*, XXVI, 437-41 (May, 1918).

which was approved by the Secretary, and which provided for the creation of six new agencies in the Department of Labor. The organization of these additional subdivisions in the department, however, was not effected until after the passage by Congress of the deficiency appropriation act of July 1, 1918, which made provision for the war labor administration. In accordance with this act, the following services were organized: Working Conditions Service, Information and Education Service, Woman in Industry Service, Investigation and Inspection Service, Personnel Service, and Training and Dilution Service.<sup>46</sup>

*Division of Information; U. S. Employment Service.* Prior to the passage of the act of July 1, 1918, several other services had been organized in the department. Under authority of Section 40 of the Immigration Act of 1907 and Section 30 of the act of 1917, directing the establishment of a Division of Information in the Bureau of Immigration, and the general power of the department to advance the wage-earners' opportunity for profitable employment, an order was issued on January 3, 1918, providing for the organization and operation of a United States Employment Service in the Office of the Secretary of Labor, in charge of a Director General.<sup>47</sup>

*War Labor Conference Board.* To secure the united approval of employers and employees for the execution of the program of war labor administration drawn up by the Advisory Council and

<sup>46</sup> Official Bulletin No. 209 (January 16, 1918), 8; *Ibid.*, No. 240 (February 21, 1918), 15; Department of Labor, Annual reports, 1918, 138, 127, 116-22, 123, 124; 40 Stat. L., 634, 696.

<sup>47</sup> Department of Labor, Annual reports, 918, 480-82. Prior to its establishment as a separate service by this order, an Employment Service had been organized in the Division of Information. An act of October 6, 1917, provided for an appropriation "to enable the Secretary of Labor during the present emergency, in addition to existing facilities, to furnish such information and to render such assistance in the employment of wage-earners throughout the United States as may be deemed necessary in the prosecution of the war." Through this appropriation and a sum allotted by the President to the department from the appropriations for national security and defense, the work of this service was extended and its organization as a separate service effected. The order of January 3 directed that the Division of Information should thereafter be an integral part of the Employment Service, with the title of Division of Information, Administration and Clearance, but that division was restored to the Bureau of Immigration on July 1, 1918.—40 Stat. L., 345, 376; Watkins, *op. cit.*, 178-205; Official Bulletin No. 253 (March 9, 1918), 12.

approved on January 28, 1918, the Secretary of Labor provided for the creation of a War Labor Conference Board composed of representatives nominated by the National Industrial Conference Board, a federation of employers, and the American Federation of Labor. This board also formulated a program of action which it submitted to the Secretary of Labor on March 29, 1918. The essential feature of this program was the proposal for a National War Labor Board, to be composed in the same manner as the War Labor Conference Board, which should sit as a final board of arbitration for the adjudication of industrial disputes. The plan received the approval of the Secretary of Labor, who appointed such a board, and the action of the conference and the appointments of the Secretary were approved and proclaimed by the President on April 8, 1918.<sup>48</sup>

*War Labor Policies Board.* To unify the activities of the numerous agencies in the several production departments of the government which were charged with the determination of wages and working conditions, a War Labor Policies Board was created by the Secretary of Labor on May 13, 1918, the chairman of which was also made Assistant to the Secretary of Labor. This board was composed of representatives of the War Department, the Navy Department, the Department of Agriculture, the United States Shipping Board, the Emergency Fleet Corporation, the Fuel Administration, the Food Administration, the Railroad Administration, and the War Industries Board, as well as the Department of Labor. Its essential function was to reconcile interdepartmental differences as to administration with reference to wages and working conditions and to recommend to the Secretary unified labor policies for harmonizing the industrial activities of separate branches of the government.<sup>49</sup>

*Director of Citizenship; Bureau of Industrial Housing and Transportation; U. S. Housing Corporation.* Under an act of May 9, 1918, making provision for the naturalization of aliens, the office of Director of Citizenship was created in the Bureau of Naturaliza-

<sup>48</sup> Department of Labor, Annual reports, 1918, 99-111; Willoughby, *op. cit.*, 226-34; Watkins, *op. cit.*, 162-73; Official Bulletin No. 280 (April 10, 1918), 3; *Ibid.*, No. 272 (April 1, 1918), 1.

<sup>49</sup> Department of Labor, Annual reports, 1918, 115-18; Official Bulletin No. 330 (June 8, 1918), 13; Watkins, *op. cit.*, 175-78.

tion.<sup>50</sup> On May 16, 1918, Congress authorized the President to expend not to exceed \$60,000,000 in providing housing facilities for war workers. An act of June 4, 1918, appropriating this amount, empowered the President to create a corporation or corporations for carrying out the work. By Executive order issued on June 18, 1918, under authority of the Overman Act, the President vested the power and authority conferred upon him by these acts in the Secretary of Labor. A Bureau of Industrial Housing and Transportation, in charge of a Director, was created by the Secretary of Labor to formulate a housing and transportation program for war workers. A United States Housing Corporation was incorporated under the laws of the State of New York on July 9, 1918, to which was assigned the work of constructing and operating housing facilities.<sup>51</sup>

*Department Cabinet; Division of Negro Economics; Commission on Living Conditions.* Announcement was made by the Secretary of Labor on July 16, 1918, that because of the increased number of subdivisions in the Department of Labor, and the interlacing of their functions, he had found it desirable to create a department cabinet composed of the heads of the several divisions, bureaus, and services in the department.<sup>52</sup> In addition to the special war services created upon the recommendation of the Advisory Council and under authority of the act of July 1, 1918, a Division of Negro Economics was established in the Secretary's Office for investigating and advising the Secretary with reference to labor problems involving Negro citizens.<sup>53</sup> A Commission on Living Conditions was also appointed by the Secretary of Labor in October, 1918, for the purpose of investigating bad living conditions as a factor in impeding the production of war materials and to devise methods of improving such conditions.<sup>54</sup>

*Special War Services Discontinued; Bureau of Industrial Housing and Employment Service Retained; Women's Bureau.* With the exception of the Bureau of Industrial Housing and Transporta-

<sup>50</sup> Department of Labor, Annual reports, 1918, 198-99.

<sup>51</sup> 40 Stat. L., 550; 594, 595; Official Bulletin No. 340 (June 20, 1918), 1; *Ibid.*, No. 358 (July 12, 1918), 1; Willoughby, *op. cit.*, 254-57.

<sup>52</sup> Department of Labor, Annual reports, 1918, 140-41; Willoughby, *op. cit.*, 242-43.

<sup>53</sup> Department of Labor, Annual reports, 1918, 111-15.

<sup>54</sup> *Ibid.*, 1919, 196-98.

tion, the Woman in Industry Service, the Employment Service, and the Division of Negro Economics, all of the special war boards and services in the Department of Labor were discontinued on or before June 30, 1919, either through lack of appropriations or by order of the Secretary of Labor. The sundry civil appropriation act of July 19, 1919, made provision for the continuance of the Woman in Industry Service, the Bureau of Industrial Housing and Transportation, and the Employment Service, but not for the Division of Negro Economics. The importance of the latter division as a temporary post-war service, however, led the Secretary to continue it until March 4, 1921, when it ceased to exist.<sup>55</sup> The small appropriation made for the Employment Service in the act of 1919 necessitated a serious curtailment of the field work of that service. Several bills were introduced in Congress looking toward its permanent establishment, but no action was taken upon them.<sup>56</sup> The need and demand for a permanent bureau in the Department of Labor to deal with questions relating to the employment of women led Congress to establish a Women's Bureau in that department by act of June 5, 1920. This bureau absorbed the Woman in Industry Service established in 1918.<sup>57</sup>

*Centralization of Labor Administration as a Permanent Policy.* The Department of Labor, like its immediate predecessors, the Department of Agriculture and the Department of Commerce and Labor, was established to promote the interests of a particular social group. Its creation as an executive department, with its head a member of the President's Cabinet, was the result of almost a half century of persistent agitation upon the part of organized labor. Prior to 1918, the administrative organization of the department, comprising, as it did, four bureaus and one division, in addition to the purely clerical divisions in the Secretary's Office, was devoid of any characteristic features. It was only after the first year of American participation in the World War that the urgent need for a unified labor administration was clearly appreciated. Once that need was recognized, however, immediate steps were

<sup>55</sup> *Ibid.*, 1920, 41; 41 Stat. L., 163, 222, 225.

<sup>56</sup> Department of Labor, Annual reports, 1919, 305-06; 1920, 142-43, 913-14, 948-51.

<sup>57</sup> 41 Stat. L., 987; Department of Labor, Annual reports, 1920, 883; Institute for Government Research, The Women's Bureau (1923).

taken which resulted in the creation of a considerable number of new subdivisions in the department, and the organization of several boards, which, while not integral parts of the Department of Labor, were subject to the general direction of the Secretary of Labor in his capacity as Labor Administrator. The principal function of this unified and centralized labor administration was the formulation of broad governmental policies in relation to labor, and the supervision of the several industrial service sections or branches of the production departments, charged with the immediate application of those policies.

Within less than a year after the close of the war, almost the entire war-labor organization had been abandoned. Only three of the services established in the Department of Labor in 1918 were retained, and of these, only one, the Women's Bureau, has been permanently organized by congressional enactment. Some question may be raised as to the wisdom of the entire abandonment of the unified system of labor administration inaugurated during the period of emergency. That system permitted a maximum of centralized control in conjunction with decentralization of administration by agencies in close touch with particular problems in each department or establishment. While it may be desirable to maintain a larger degree of control within each department over its own individual policy of labor administration, as a permanent peace-time system or organization, than was advisable during the war period, the admitted success of centralized control in 1918 suggests at least a partial retention of that system as a permanent feature of administrative organization in the Department of Labor.

## CHAPTER XX

### PERMANENT DETACHED AGENCIES

In noting the development of permanent administrative bureaus, boards, and commissions, independent of the ten executive departments, since 1860, no attempt will be made to enter fully into the causes leading up to the organization of those detached agencies or to trace their subsequent development and expansion. Furthermore, it will be impossible, within the limits of this chapter, to give a detailed account of the establishment of all of the detached services created since 1860, many of which were of comparatively minor importance. An effort will be made, however, to examine briefly the influences which led to the creation of the more important of these independent administrative establishments, and to point out the significance of what seems to be an increasing tendency toward the creation of such services, with respect to the general system of national administration.

As has been observed in a preceding chapter dealing with the establishment and organization of permanent detached administrative agencies prior to 1860, only four of the services thus created, namely, the Library of Congress, the Smithsonian Institution, the Botanic Garden, and the Government Printing Office, continued as such until that date, although the Mint was not definitely organized as a bureau in the Treasury Department until 1873. The general aversion of the early statesmen to the creation of administrative services outside of the executive departments no doubt was responsible to a large extent for the small number of detached agencies prior to the Civil War period.<sup>1</sup>

<sup>1</sup> James Monroe, as Secretary of State, expressed what seems to have been the general opinion as to the creation of such services as follows: "I have always thought that every institution, of whatever nature soever it might be, ought to be comprised within some one of the Departments of Government, the chief of which only should be responsible to the Chief Executive Magistrate of the nation. The establishment of inferior independent departments, the heads of which are not, and ought not to be, members of the administration, appears to me to be liable to many serious

**Establishment of Independent "Departments"; Office of Commissioner of Fish and Fisheries.** Beginning with the establishment of the Department of Agriculture in 1862, several administrative agencies were organized which, although designated as "departments," were distinctly inferior to the several executive departments, and were in charge of commissioners instead of secretaries, without representation in the President's Cabinet. As all of these so-called "departments" were later raised to the status of an executive department or lowered to the rank of a bureau within one of the existing departments, their establishment has already been noted in preceding chapters. They possessed one common characteristic, namely, that their establishment was the result, in large measure, of pressure brought to bear upon Congress by particular groups or interests. Thus the United States Agricultural Society, representing the interests of the farmers, influenced Congress to create a Department of Agriculture in 1862.<sup>2</sup> The establishment of a Department of Education in 1867 was the direct result of a convincing memorial presented to Congress by the National Association of School Superintendents.<sup>3</sup> The creation of the Department of Labor in 1888 was recommended to Congress by President Cleveland at the instance of the Knights of Labor.<sup>4</sup> In this connection

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objections . . . I will mention the following only, first, that the concerns of such inferior departments cannot be investigated and discussed with the same advantage in the meetings and deliberations of the administration, as they might if the person charged with them was present. The second is that, to remedy this inconvenience, the President would, necessarily, become the head of that department himself, and thus be drawn into much investigation, in detail, that would take his attention from more general and important concerns, to the prejudice of the public interest."—American State Papers, Misc., II, 192. This contention was reiterated by the heads of all four of the executive departments in a joint report submitted to Congress on December 31, 1816, concerning the creation of an additional executive department. "The various branches of executive authority are now under the direction of the Secretaries of the Departments, except the General Post Office and the Mint. They form exceptions to the general principle upon which the Executive Department has been organized. The best examination which the Secretaries have been able to give the subject has led to the belief that the anomalous organization of these Departments has not been productive of any beneficial consequences."—*Ibid.*, 418.

<sup>2</sup> *Supra*, 377-78.

<sup>3</sup> *Supra*, 359. Cf. Commissioner of Education, Annual reports, 1868, 49.

<sup>4</sup> *Supra*, 397-98. Cf. Wright, *The working of the department of labor*, Monographs on Social Economics, I, 1-2 (1901).

may also be mentioned the establishment of the Office of Commissioner of Fish and Fisheries which was urged upon Congress by the American Fish Culturists' Association and state fishery officers.<sup>5</sup>

Two factors contributed to the organization of these services outside of the executive departments. In the first place the nature of their functions was such as to make their incorporation in any of the existing departments seem illogical. Secondly, the interests advocating their establishment favored granting to them at least an independent status, if not the rank of an executive department. While some objections were voiced in Congress against the establishment of these independent "departments," such objections were based upon the arguments of class legislation, unfit subjects for national supervision, or degree of importance, rather than upon the inadvisability of thus departing from the general system of administrative organization adopted in 1789.

**National Academy of Sciences; National Home for Disabled Soldiers; District of Columbia; Superintendent of State, War, and Navy Building.** In addition to the detached services just noted, mention should also be made of the incorporation of the National Academy of Sciences by act of March 3, 1863, which was required, when called upon by any department of the government, to investigate, examine, experiment, and report upon any subject of science or art; the National Asylum for Disabled Volunteer Soldiers (later called the National Home for Disabled Soldiers), established by act of March 21, 1866, in charge of a board of managers reporting directly to Congress; the Government of the District of Columbia, provided for by acts of February 21, 1871, June 20, 1874, and June 11, 1878; and the Office of Superintendent of the State, War, and Navy Building, under the direction of a commission composed of the Secretaries of State, War, and Navy, established by act of March 3, 1883.<sup>6</sup>

<sup>5</sup> *Supra*, 401n. Cf. 42 Cong. 2 sess. (1871-72), S. misc. doc. 61, 7-12; The department of commerce, 36 (1915).

<sup>6</sup> 12 Stat. L., 806; 14 Stat. L., 10; 16 Stat. L., 419; 18 Stat. L., 116; 20 Stat. L., 102; 22 Stat. L., 531, 553. The participation of Congress in administrative supervision and control is illustrated in the organization of the first two of these establishments, whose reports are submitted directly to that body rather than through the President.

**Civil Service Commission.** In an effort to improve the civil service of the national government, which was suffering from the widespread introduction of the "spoils system" in the appointment of public officers and employees, Congress, after several years of agitation upon the part of individuals and organizations interested in civil service reform, established a Civil Service Commission by act of January 16, 1883, composed of three members appointed by the President, with the consent of the Senate, not more than two of whom should be adherents of the same political party. The members of this commission were required to assist the President in preparing suitable rules for the regulation and improvement of the civil service, to conduct examinations, and to report annually to the President on the practical effects of the rules and regulations adopted. A concise statement as to the exact status of this commission as a branch of the national administration was given in an opinion rendered by the Attorney General to the President on May 4, 1898, as follows: "It [the Civil Service Commission] is not attached in any wise to any of the executive departments, nor is it subject in any wise to the control of any of the heads of those departments. There is nothing in the act constituting the commission which makes it subject to any regulation or control except that of the President himself."<sup>7</sup>

**Interstate Commerce Commission.** Four years later, Congress, after an exhaustive investigation as to the necessity of federal regulation of interstate railroad transportation, established an Interstate Commerce Commission by act of February 4, 1887, composed of five commissioners appointed by the President, with the consent of the Senate. The duties of this commission were of a twofold character. It acted in an administrative capacity in the collection of railroad statistics and in the conduct of investiga-

<sup>7</sup> 22 Stat. L., 403; 22 Op. Atty. Gen., 62. An Advisory Board to assist the President in the formulation of rules for the conduct of competitive examinations for positions in the civil service was created by act of Congress approved March 3, 1871. To insure the establishment of this board, the section providing for its creation was attached as a rider to the sundry civil appropriation act during the closing hours of the session of Congress. The board was discontinued in 1874 through lack of appropriations.—16 Stat. L., 495, 514. Cf. Fish, The civil service and the patronage, 210-21; also Powers, The reform of the federal service, *Political Science Quarterly*, III, 258-59 (June, 1888).

tions relating to the management of the business of common carriers, while its authority to hear complaints charging local discriminations and unreasonable rates was quasi-judicial. The act of 1887 gave the commission authority to appoint a secretary, and also to determine the number and compensation of additional employees, subject to the approval of the Secretary of the Interior. The latter officer was required to furnish offices and supplies for the commission, and the annual reports of the commission were to be submitted to him.<sup>8</sup>

Upon the recommendation of the Secretary of the Interior, as well as the commission itself, an amendment to the act of 1887 was passed by Congress and approved on March 2, 1889, which entirely removed the commission from the supervision of the Secretary of the Interior, and gave it an independent status, directing that its reports should thereafter be submitted to Congress.<sup>9</sup> The powers and duties of this commission have been greatly enlarged by subsequent acts of Congress and the number of commissioners increased to eleven.<sup>10</sup> By act of August 9, 1917, the commission is authorized to divide its membership into as many divisions as may be deemed necessary and to assign or refer any of its functions to such a division for action. In accordance with this authority, the members of the commission are grouped into five divisions, which are empowered to prosecute and conclude matters, subject to a rehearing by the entire commission, with the same effect as if the action had been taken by the entire body. To assist in the performance of its work, the commission has created twelve bureaus in charge of directors or chiefs appointed by the commission, namely, Finance, Accounts, Statistics, Valuation, Locomotive Inspection, Safety, Service, Inquiry, Law, Traffic, Informal Cases, and Formal Cases. A Bureau of Administration has been created in charge of the Secretary of the commission to perform duties of an institutional nature, such as mails and files, supplies, publications, and library.<sup>11</sup>

<sup>8</sup> 24 Stat. L., 483.

<sup>9</sup> 25 Stat. L., 855; 50 Cong. 2 sess. (1888-89), H. ex. doc. 1, Pt. 5, 100.

<sup>10</sup> For a résumé of the acts defining the powers of the commission, see the Congressional directory (December, 1921), 355-62; also Guide to U. S. government publications, 1918 (hereinafter cited as "Guide"), 135-38; 34 Stat. L., 584, 595; 40 Stat. L., 270; 41 Stat. L., 456, 497.

<sup>11</sup> 40 Stat. L., 270, 271; Interstate Commerce Commission, Annual report, 1922, 28 ff; Institute for Government Research, Interstate Commerce Commission, Ch. III (1923).

**Significance of Establishment of Civil Service and Interstate Commerce Commissions.** The creation of these two independent commissions marks a twofold departure from the established system of national administrative organization, namely, board control in place of single-headed control, and independence from the general supervision of a Cabinet officer. The debates on these two acts indicate that the character of the powers intrusted to them, which were quasi-judicial and quasi-legislative as well as administrative, was a deciding factor as to their form of organization. Each of the commissions was authorized to appoint a secretary, who was charged with most of their purely administrative duties. Furthermore, the Civil Service Commission was created as an aid to the President in improving the civil service, and its work necessarily included all of the executive departments. With respect to the Interstate Commerce Commission it should be borne in mind that, at the time of its establishment, there was no executive department charged with the exclusive control of governmental relations to commerce. When such a department was under consideration in 1902 and 1903 there seems to have been considerable sentiment in Congress in favor of placing the Interstate Commerce Commission under its general jurisdiction. An amendment to the House bill providing for such action was adopted by the House, but was stricken out in the final bill as reported by the conference committee.<sup>12</sup>

<sup>12</sup> The transfer of the Interstate Commerce Commission to the proposed Department of Commerce and Labor was first advocated in the Senate on January 23, 1902, by Senator Hale, who expressed the opinion that that commission, "which is simply judicial in its decisions affecting interstate commerce, ought to be under the head and control of this Department . . ." Senator Hale offered an amendment to that effect, which was opposed by Senator Martin, who, although favoring, as a general proposition, the classification of all bureaus under some cabinet officer, contended that the Interstate Commerce Commission was a quasi-judicial tribunal in some of its features and should therefore be independent. He also expressed the conviction that the Civil Service Commission should remain independent, because it dealt with all departments of the government. Senator Spooner concurred in the remarks of Senator Martin, declaring that there were "peculiar reasons why the Interstate Commerce Commission should not be transferred to a department." Senator Hale withdrew his amendment on January 28, after having been convinced that to place the commission in the new department would destroy its usefulness. The matter was again taken up in the debate on the House bill, when Mr. Overstreet offered an amendment authorizing the President, by Executive order, to

**Geographic Board; Superintendent of Documents.** Following the establishment of the Interstate Commerce Commission in 1887, no permanent detached services of major importance were created until 1913. There was a considerable number of such agencies of distinctly lesser importance created during this period, however, in addition to certain temporary commissions charged with the conduct of investigations for the enlightenment of Congress. It will be possible to mention only a few of these agencies here, as typical of the whole number. A Geographic Names Board was created by Executive order dated September 4, 1890, to pass upon all unsettled questions concerning geographic names which might arise in any of the departments. The name of this board was changed to the Geographic Board by Executive order issued on August 10, 1906.<sup>13</sup> The office of Superintendent of Documents was established as a branch of the Government Printing Office by act of January 12, 1895.<sup>14</sup>

**Copyright Office; Legislative Reference Service.** An act of February 19, 1897, created a Copyright Office in the Library of Congress in charge of a Register of Copyrights, subject to the direction and supervision of the Librarian of Congress. The Department of State was made the repository for maps, charts, and books for which copyrights might be granted by the United States district courts under an act of May 31, 1790. The records and books dealing with copyright matters were transferred to the Department of the Interior by act of February 5, 1859, from which they passed to the Library of Congress by authority of the act of July 8, 1870,

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transfer the commission to the Department of Commerce, declaring that "the failure of this House to cover this Commission, which today exercises a peculiar and almost complete control, so far as law is permitted by Congress over transportation lines, into the new Department, would be to omit the most important factor of the Department of Commerce." The amendment was opposed by Mr. DeArmond, who expressed the conviction that the commission would "lose in dignity, lose in importance, lose in power, and lose in usefulness by transferring it to this Department and placing it under this control." Mr. Overstreet's amendment was adopted by a close vote, but the report of the conference committee on the House and Senate bills, submitted on February 9, 1903, struck out this provision.— Cf. Organization and law of the department of commerce and labor, 497, 501, 511, 514-16, 528, 621-22, 623 (1904).

<sup>13</sup> Guide, 163; Checklist of U. S. public documents, 1789-1909, 410.

<sup>14</sup> 28 Stat. L., 601, 610; *Supra*, 364.

conferring complete jurisdiction over the granting of copyrights to the Librarian of Congress. Mention should be made here, also, of the establishment of a Legislative Reference Service under the direction of the Librarian of Congress by act of March 4, 1915.<sup>15</sup>

**Commission of Fine Arts; National Forest Reservation Commission.** A permanent body known as the Commission of Fine Arts, composed of "seven well-qualified judges of the fine arts" appointed by the President, was created by act of May 17, 1910, whose duty it should be to advise upon the location of statues, fountains and monuments in the District of Columbia, and upon the selection of models for such statues and monuments erected under authority of the United States. The powers and duties of this commission have since been enlarged by Executive orders.<sup>16</sup>

A National Forest Reservation Commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, two members of the Senate selected by the President of the Senate, and two members of the House of Representatives selected by the Speaker, was created by act of March 1, 1911, and authorized to consider and pass upon such lands as might be recommended for purchase by the Secretary of Agriculture, which the latter deems necessary to the regulation of the flow of navigable streams. The Secretary of Agriculture is authorized to purchase, in the name of the United States, such lands as have been approved for purchase by the commission and at the price or prices fixed by that body.<sup>17</sup>

**Temporary Commissions, 1898-1912.** The more important of the temporary commissions created by Congress for purposes of investigation were the following: the Industrial Commission created by act of June 18, 1898; the President's Commission on Economy and Efficiency, created on March 8, 1911, under authority of an act of June 25, 1910; the Employer's Liability and Workmen's Compensation Commission, established by joint resolution of June 25, 1910; and the Commission on Industrial Relations, created by act of August 23, 1912. A characteristic feature of these temporary com-

<sup>15</sup> 1 Stat. L., 124, 125; 11 Stat. L., 379, 380; 16 Stat. L., 198, 212; 29 Stat. L., 538, 545; 38 Stat. L., 997, 1005.

<sup>16</sup> 36 Stat. L., 371; Guide, 164.

<sup>17</sup> 36 Stat. L., 961.

missions, except the Commission on Economy and Efficiency, was the representation of both the legislative and executive branches of the national government in their membership.<sup>18</sup>

**Board of Mediation and Conciliation.** The movement toward the creation of permanent administrative agencies outside of the executive departments has been especially noticeable since 1913. The necessity of maintaining continuity of service in interstate railroad transportation, uninterrupted by serious industrial disputes, led Congress to create a Board of Mediation and Conciliation by act of July 15, 1913, composed of a Commissioner of Mediation appointed by the President, with the consent of the Senate, and two other officers of the government who had been appointed by and with the advice and consent of the Senate. This board was empowered to proffer its services in any case where interruption of traffic was imminent and fraught with serious detriment to the public interest, and to use its best efforts, by mediation and conciliation, to bring about an agreement, upon the request of one or both parties to the controversy. Although its work was closely identified with that of the Division of Conciliation in the Department of Labor, the Board of Mediation and Conciliation was not a branch of that department. The offices of Commissioner and Assistant Commissioner of Mediation and Conciliation were abolished by the deficiency appropriation act of December 15, 1921, which appropriated funds necessary to conclude the business of the Board of Mediation and Conciliation.<sup>19</sup>

**Federal Reserve Board.** One of the most important detached agencies established since the creation of the Interstate Commerce Commission in 1887 is the Federal Reserve Board, organized pursuant to the Federal Reserve Act of December 23, 1913. Monetary legislation was made the subject of a special message to Congress by President Wilson on June 23, 1913, and bills were introduced in each House of Congress embodying the ideas of the President and formulated by that officer in consultation with the Secretary of the Treasury and the chairman of the committees on banking and currency.<sup>20</sup> The essential feature of the act was the provision for a dis-

<sup>18</sup> 30 Stat. L., 476; 31 Stat. L., 588, 642; 36 Stat. L., 703; 1363; 37 Stat. L., 417; 36 Stat. L., 884; 1289, 1315; 37 Stat. L., 415; Guide, 173.

<sup>19</sup> 38 Stat. L., 103, 106; Guide, 150-51; 42 Stat. L., 327, 328.

<sup>20</sup> 63 Cong. 1 sess. (1913), Congressional Record, Vol. 50, Pt. 3, 2132, 2142.

trict centralization of banking reserves, through the creation of twelve Federal Reserve districts. The Federal Reserve Board, which was empowered to exercise a broad supervision over the affairs and conduct of the twelve Federal Reserve banks to be established in accordance with the act, was to be composed of seven members, including the Secretary of the Treasury and the Comptroller of the Currency as *ex officio* members, and five others appointed by the President, with the consent of the Senate; the latter to be selected with due regard to a fair representation of the different commercial, industrial, and geographical divisions of the country. The President was authorized to designate one of the five members appointed by him as Governor of the Board, and another as Vice Governor, who should act as the executive officers of the board. Although the Secretary of the Treasury is *ex officio* chairman of the board, it is not subject to his direction, except in case of coördinate jurisdiction. The act of 1913 also provided for a Federal Advisory Commission, to be composed of one representative from each Federal Reserve district, chosen by the boards of directors of the twelve Federal Reserve banks, which should meet quarterly at Washington to confer with the Federal Reserve Board, to secure information, and to make recommendations. An amendment to the Federal Reserve Act, approved June 3, 1922, increased the number of appointive members of the Federal Reserve Board to six, in order to permit the representation of agricultural interests in the personnel of the board.<sup>21</sup>

**Rock Creek and Potomac Parkway Commission.** Section 22 of the Public Buildings Omnibus Act, approved March 4, 1913, created a commission composed of the Secretary of the Treasury, the Secretary of War, and the Secretary of Agriculture, to acquire land adjoining Rock Creek in the District of Columbia not owned by the United States and necessary to connect Potomac Park with the

<sup>21</sup> 38 Stat. L., 251, 260; 42 Stat. L., 620; Federal Reserve Board, Annual report, 1922, 39. Attorney General Gregory, in an opinion rendered to the Secretary of the Treasury on March 16, 1914, held that the Federal Reserve Board was not a bureau, office, or division of the Treasury Department, but was "an independent board or government establishment," and that where there was no conflict between the powers of the board and the Secretary of the Treasury, the board was independent of that officer.—<sup>20</sup> Op. Atty. Gen., 308, 311.

Zoological Park and Rock Creek Park. This commission has been designated the Rock Creek and Potomac Parkway Commission.<sup>22</sup>

**Federal Trade Commission.** The serious and complex problems confronting the national government with respect to the control and regulation of large industrial and commercial combinations led Congress to create a Federal Trade Commission by act of September 26, 1914, to consist of five members, appointed by the President, with the consent of the Senate, not more than three of whom should be members of the same political party. The powers of this commission are twofold, namely, powers of investigation and publicity, and quasi-judicial powers. The act creating the commission provided for the abolition of the Bureau of Corporations in the Department of Commerce, and the transfer of the clerical personnel and records of that bureau to the Commission. The reports of the commission are submitted directly to Congress.<sup>23</sup>

**Naval Advisory Committee for Aeronautics.** A section of the naval appropriation act of March 3, 1915, provided for the creation of a National Advisory Committee for Aeronautics, to be composed of two officers of the army, two officers of the navy, a representative each of the Smithsonian Institution, the Weather Bureau, and the Bureau of Standards, and five other persons "acquainted with the needs of aeronautical science, either civil or military, or skilled in aeronautical engineering or its applied sciences." The function of this committee, the members of which were to serve without compensation, was "to supervise and direct the scientific study of the problems of flight, with a view to their practical solution, and to determine the problems which should be experimentally attacked, and to discuss their solution and their application to actual questions." This committee coöperated actively during the World War with the several governmental agencies concerned with aircraft production and operation.<sup>24</sup>

<sup>22</sup> 37 Stat. L., 866, 885.

<sup>23</sup> 38 Stat. L., 717; *Su/pra*, 406. The several statutes prescribing the duties of the commission and the organization of the commission for the performance of its work are set forth in the Annual Report of the Commission, 1922, 1-8. Institute for Government Research, The Federal Trade Commission (1922).

<sup>24</sup> 38 Stat. L., 928, 930. Cf. Emery and Williams, Governmental war agencies affecting business, 12 (1918).

**Bureau of Efficiency; Federal Farm Loan Board.** An unusually large number of permanent administrative agencies, independent of existing departments, were created in 1916. A deficiency appropriation act of February 28, 1916, removed the Division of Efficiency, established on March 25, 1913, from the Civil Service Commission, and gave it the status of an independent administrative establishment, under the title of Bureau of Efficiency.<sup>25</sup> Mention should be made here of the creation, by the act of July 17, 1916, of the Federal Farm Loan Board, to be composed of five members, including the Secretary of the Treasury, as *ex officio* chairman, and four persons appointed by the President, with the consent of the Senate, not more than two of whom should belong to the same political party. Although the Federal Farm Loan Bureau is nominally under the jurisdiction of the Treasury Department, the Federal Farm Loan Board possesses practically the same degree of independence as that granted to the Federal Reserve Board. It has full authority to employ such legal and clerical assistance as it may deem necessary to conduct its business, and its reports are submitted directly to the Speaker of the House of Representatives. The number of appointive members of the Farm Loan Board was increased to six by act of March 4, 1923.<sup>26</sup>

**National Research Council; Council of National Defense.** An offer made by the National Academy of Sciences to the President to organize the scientific resources of educational and research institutions in the interest of national preparedness was accepted by President Wilson on April 26, 1916, and accordingly a National Research Council was organized to have charge of this work, the establishment of which was formally approved by the President on July 24, 1916. By Executive order of May 11, 1918, the National Research Council was organized as a permanent agency for coördinating the scientific work of the government.<sup>27</sup> The imminence of war with Germany having become increasingly

<sup>25</sup> 39 Stat. L., 14, 15. For the legislative history of this bureau, see Weber, Organized efforts for the improvement of methods of administration in the United States, 104-12 (1919).

<sup>26</sup> 39 Stat. L., 360; *Supra*, 284. 67 Cong., Public Act No. 503, Mar. 4, 1923, 22.

<sup>27</sup> Willoughby, Government organization in war time and after, 23-24 (1919); Official Bulletin No. 309 (May 14, 1918), 1.

apparent in 1916, Congress established a Council of National Defense by act of August 29, 1916, composed of the Secretaries of War, Navy, Interior, Agriculture, Commerce, and Labor, charged with "the coördination of industries and resources for the national security and welfare." The act also provided for the creation of an Advisory Commission to the Council, to be composed of seven members, appointed by the President upon the recommendation of the council, each of whom should be specially qualified in some line which would make his services of value to the council. The expansion of the organization of this agency during the war period will be discussed in the following chapter. Because of the failure of Congress to grant an appropriation for the work of the Council of National Defense for the fiscal year ending June 30, 1922, the council discontinued its activities on June 30, 1921, and its records were transferred to the War Department in accordance with an Executive order of April 21, 1921.<sup>23</sup>

**U. S. Shipping Board; Emergency Fleet Corporation; Employees' Compensation Commission.** With a view to providing an organ of the national government which might exercise the same regulative control over carriers by water engaged in interstate and foreign transportation as was exercised by the Interstate Commerce Commission and the Federal Trade Commission in respect to inland transportation and industrial corporations engaged in interstate business, and which might also aid in the upbuilding of a merchant marine, Congress created a United States Shipping Board by act of September 7, 1916. Although created as a permanent administrative agency, this board proved to be a most important part of the war organization, and the expansion of its activities and organization, resulting in the establishment of the Emergency Fleet Corporation, will be noted in the chapter dealing

<sup>23</sup> 39 Stat. L., 619, 649. A bill providing for a Council of National Defense had been introduced in Congress as early as April 22, 1912, which was to be composed of *ex officio* members representing the two Houses of Congress, the President, and the War and Navy departments. Although the bill received the endorsement of the President and the Secretaries of War and Navy, it failed of enactment.—62 Cong. 2 sess. (1911-12), Congressional Record, Vol. 48, Pt. 5, 5162; 62 Cong. 2 sess., H. rep. 584; Council of National Defense, Annual report, 1917, 6; Executive Order No. 3439, Apr. 21, 1921.

with special war agencies.<sup>29</sup> An act approved on the same date as the Shipping Act, and providing compensation for employees of the United States suffering injuries while in the performance of their duties, created the United States Employees' Compensation Commission, to consist of three commissioners appointed by the President, with the consent of the Senate, one of whom should be designated as chairman. The reports of this commission, which is independent of any of the executive departments, are submitted directly to Congress.<sup>30</sup>

**Tariff Commission.** To enlighten Congress as to the beneficial or detrimental effect of tariff rates upon agriculture, manufacturing, and commerce, a United States Tariff Commission was established by act of September 8, 1916, to be composed of six members appointed by the President, with the consent of the Senate, not more than three of whom belong to the same political party. The Tariff Commission is also an independent administrative establishment, submitting its reports directly to Congress.<sup>31</sup> Additional functions were granted to the commission by the tariff act of September 21, 1922, which imposes upon the President the duty of adjusting upward or downward individual tariff rates after an investigation by the Tariff Commission has shown that this action is necessary to equalize the differences of costs of production in the United States and the principal competing country. This act also authorizes the President to retaliate against unfair methods of competition and unfair acts in the importation of merchandise into the United States by the imposition of additional duties, or in extreme cases, the exclusion of goods from entry into the United States, and also directs him to secure, by retaliatory duties if necessary, the removal of all discriminations which foreign countries may inflict upon the commerce of the United States. The Tariff Commission is made the agency to assist the President in the performance of these duties. For the performance of its work the commission

<sup>29</sup> 39 Stat. L., 728; Willoughby, *op. cit.*, 144-46.

<sup>30</sup> 39 Stat. L., 742, 748; Guide, 151; U. S. Employees' Compensation Commission, Annual report, 1922, 5-7; Institute for Government Research, *The Employees' Compensation Commission* (1922).

<sup>31</sup> 39 Stat. L., 756, 795; Congressional directory (December, 1921), 374; Institute for Government Research, *The Tariff Commission* (1922).

has reorganized its staff into four main divisions : (a) The Office of the Chief Economist ; (b) the Office of the Chief Investigator ; (c) the Legal Division ; and (d) the Administrative Division.<sup>32</sup>

**Federal Board for Vocational Education.** An act of February 23, 1917, providing for the promotion of vocational education, authorized the establishment of a Federal Board for Vocational Education, to consist of the Secretaries of Agriculture, Commerce, and Labor, the Commissioner of Education, and three citizens appointed by the President, with the consent of the Senate, one of whom should represent manufacturing and commercial interests; another, the interests of labor; and the third, the interests of agriculture. The duties imposed upon the board are of a twofold character: First, it is the representative of the government appointed to coöperate with boards appointed by the states in promoting vocational education; and, second, it is required to make, or cause to have made, reports on vocational subjects. The reports of the board are submitted directly to Congress.<sup>33</sup>

**Interdepartmental Social Hygiene Board.** Following the establishment of the Federal Board for Vocational Education, no additional permanent administrative agencies were created until after the close of the war period. A number of services created during the war, however, have been continued or revived as permanent establishments. Their war-time organization and activities will be discussed in the following chapter, but to the extent that they can be considered as permanent agencies, they deserve recognition here.

An Interdepartmental Social Hygiene Board was created by act of July 9, 1918, to consist of the Secretaries of War, Navy, and Treasury as *ex officio* members, and of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Public Health Service. This board was authorized: (1) To recommend rules and regulations to the Secretary of War and the Secretary of the Navy for the expenditure of moneys allotted to the states to assist them in caring for civilians whose detention, isolation, quarantine, or commitment to institutions might be found

<sup>32</sup> 42 Stat. L., 858, 941-46; Tariff Commission, Annual report, 1922, 1-6, 57-66.

<sup>33</sup> 39 Stat. L., 929, 932; Guide, 152. The present administrative organization of the board is shown in a chart in its annual report, 1922.

necessary for the protection of the military and naval forces of the United States against venereal diseases; (2) to select educational institutions to which allotments should be made for the purpose of discovering more effective medical measures in the prevention and treatment of venereal diseases and for developing more effective educational measures in the prevention of venereal diseases; and (3) to recommend to the Secretaries of War, Navy, and Treasury such general measures as would promote correlation and efficiency in carrying out the purposes of the act by their respective departments. A Division of Venereal Diseases in the Bureau of the Public Health Service also was established by this act to assist in the treatment and prevention of venereal diseases. Subsequent appropriation acts continued and enlarged the duties and powers of the Interdepartmental Social Hygiene Board.<sup>34</sup> Congress failed to appropriate funds to enable the board to continue its work during the year 1922-1923, but did grant an appropriation to the Public Health Service for allotment to state boards of health. According to an opinion rendered by the Assistant Attorney General, the board still exists, created by act of Congress, but now is without power to function in the field.<sup>35</sup>

**Commission for Standardization of Screw Threads.** By act of July 18, 1918, Congress created a Commission for the Standardization of Screw Threads, to be composed of nine members and chosen as follows: The Director of the Bureau of Standards, as chairman of the commission; two commissioned officers of the army, appointed by the Secretary of War; two commissioned officers of the navy, appointed by the Secretary of the Navy; and four members appointed by the Secretary of Commerce, two of whom should be chosen from nominations made by the American Society of Mechanical Engineers and two from nominations made by the Society of Automotive Engineers. It was made the duty of this commission to ascertain and establish standards for screw threads which, when accepted and approved by the Secretaries of War, Navy, and Commerce, should be adopted and used in the several manufacturing plants under the control of the War and Navy departments, and, so far as practicable, in all specifications for

<sup>34</sup> 40 Stat. L., 845, 886; 41 Stat. L., 163, 178; 874, 888; 42 Stat. L., 29, 61.

<sup>35</sup> 67 Cong., Public Act No. 145, Feb. 27, 1922; Interdepartmental Social Hygiene Board, Annual report, 1922, 13-15.

screw threads in proposals for manufactured articles or materials to be used under the direction of these departments. The Secretary of Commerce was further authorized to promulgate such standards, in the form of a public document, for use by the public. The life of the commission was fixed at six months from the date of its appointment, but it has been continued by subsequent acts, the last of which, approved March 21, 1922, extends its existence for a period of five years.<sup>26</sup>

**Alien Property Custodian.** Under the provisions of the Trading-with-the-Enemy Act, approved October 6, 1917, as amended by acts of July 11, 1919, and June 5, 1920, property taken by the United States from the German and Austro-Hungarian governments or their nationals was to be held until after the war and until such time as Congress should direct its disposition. Consequently the Office of Alien Property Custodian, created by the original act of October 6, 1917, to receive and administer such property, has been continued indefinitely. The joint resolution of July 2, 1921, terminating the state of war between the United States and the German and Austro-Hungarian governments, ordered the retention of this property until such time as these former enemy governments have made satisfactory provision for the settlement of claims of American citizens against them.

In accordance with a recommendation made by the Alien Property Custodian, Congress in the act of March 4, 1923, authorized the return of all property in trusts of the value of \$10,000 and under, and in those trusts which exceed in value of this sum, the return of an amount not to exceed \$10,000. This will make it possible for the Custodian's Office to dispose of approximately 93 per cent of its smaller trusts, and yet leave ample property to guarantee the settlement of American claims in accordance with the terms of the peace resolution.

At the present time, the Office of the Alien Property Custodian is organized as follows: Bureau of Law, in charge of the General Counsel who also acts as Assistant Custodian in the absence of the Custodian; Division of Administration; Division of Claims; Division of Corporation Management; and Division of Trusts. The last-named division contains a Section of Insurance which coördinates

<sup>26</sup> 40 Stat. L., 912; 1291; 41 Stat. L., 536; 42 Stat. L., 469.

the work of the Office of Enemy Insurance Companies, located in New York City, with the Washington office.<sup>37</sup>

**War Finance Corporation.** The War Finance Corporation, created by act of April 5, 1918, for the purpose of lending financial assistance to business organizations in the United States whose operations were necessary or contributory to the successful prosecution of the war, was continued and its powers extended by act of March 3, 1919, to embrace an entirely new activity, namely, the promotion of the export trade of the United States. In the performance of this function, the corporation was authorized to make loans, for periods not to exceed five years, to any person, firm, corporation, or association in the United States engaged in the business of exporting domestic products therefrom to foreign countries and for the sole purpose of assisting in the exportation of such products—such loans to be made only where the applicant is unable to obtain funds upon reasonable terms through banking channels. The corporation may also grant loans to banks or trust companies in the United States to enable them to make advances to persons or corporations engaged in the exportation of domestic products to foreign countries. The powers of the corporation were still further extended by act of August 24, 1921, which authorizes advances not only to exporters and banking institutions, but also to dealers in, and handlers of, agricultural products, including coöperative associations, for the purpose of financing the storage of such products until they can be exported or sold for export in an orderly manner. The Secretary of Agriculture was added to the corporation by this act.

The original act creating the War Finance Corporation limited its duration to six months following the termination of the war, as proclaimed by the President. Notwithstanding this limitation, the act of March 3, 1919, authorized advances to those engaged in export trade until the expiration of one year after the termination of the war, as fixed by the proclamation of the President. The act of August 24, 1921, struck out the time limits prescribed in the previous acts and directed that the corporation should cease to exercise its powers, except such as were incidental to the liquidation of its assets and the winding up of its affairs, after July 1, 1922. The

<sup>37</sup> 40 Stat. L., 411, 415; 41 Stat. L., 35; 977; 42 Stat. L., 105, 106; 67 Cong., Public Act No. 536, Mar. 4, 1923; *Infra*, 446; Alien Property Custodian, Annual report, 1922, 5-8, 82.

powers of the corporation were extended for one year by act of June 10, 1922, and the recent act of March 4, 1923, still further extends the time limit to April 1, 1924.<sup>38</sup>

**Public Buildings Commission.** Congress established a Public Buildings Commission by act of March 1, 1919, to have charge of the allotment of space in owned or leased government buildings in the District of Columbia. The personnel of the commission consists of two senators appointed by the President of the Senate, two members of the House of Representatives appointed by the Speaker, the Architect of the Capitol, the officer in charge of public buildings and grounds, and the Supervising Architect.<sup>39</sup>

**U. S. Railroad Administration.** The Transportation Act, 1920, in terminating government control of the railroads, undertaken during the war as an emergency measure, authorizes the President to adjust and liquidate all matters, including compensation, and all questions in dispute of any nature arising out of, or incident to, federal control. By proclamation of the President issued on February 28, 1920, the same date on which the above-mentioned act was approved, Mr. Walker D. Hines, Director General of Railroads, was authorized to perform all the powers and duties conferred upon the President by the provisions of the Transportation Act, except the designation of the agent under Section 206 thereof, against whom suits might be brought based upon causes for action arising out of the possession, use, or operation of the railroads by the government. In a proclamation dated March 11, 1920, Mr. Hines was also designated as the agent provided for by this section of the act. The present Office of the United States Railroad Commission comprises the Director General, Assistant to the Director General, Comptroller, Director of the Division of Liquidation Claims, Director of the Division of Finance, and the General Solicitor.<sup>40</sup>

<sup>38</sup> 40 Stat. L., 506-512; 1309, 1313; 42 Stat. L., 634; 67 Cong., Public Act No. 503, Sec. 503, March 4, 1923; War Finance Corporation, Annual report, 1922, 11; Congressional directory (January, 1923), 383-5; *Infra*, 448.

<sup>39</sup> 40 Stat. L., 1213, 1269.

<sup>40</sup> 40 Stat. L., 457, 461; Congressional directory (January, 1923), 302, 382; *Infra*, 446-47.

**Railroad Labor Board; Federal Power Commission.** Section 304 of the Transportation Act of February 28, 1920, providing for the termination of federal control of the railroads of the United States, authorized the establishment of a Railroad Labor Board, to be composed of nine members appointed by the President, with the consent of the Senate, as follows: Three members constituting the labor group, representing the employees and subordinate officers of the carriers; three members constituting the management group, representing the carriers; and three members constituting the public group, representing the public. This board, whose function is primarily that of a permanent court of arbitration for the adjudication of railroad disputes, is an independent agency, responsible only to the President and to Congress.<sup>41</sup> The Federal Water Power Act of June 10, 1920, created the Federal Power Commission, to consist of the Secretaries of War, Interior, and Agriculture. The operations of this commission, upon which it reports directly to Congress, are conducted under the supervision of an Executive Secretary, assisted by an engineer officer detailed from the Engineer Corps of the Army, and by other persons assigned to the work of the commission by the Departments of War, Interior, and Agriculture.<sup>42</sup>

**General Accounting Office.** It will be noted that during the present century only three of the large number of independent administrative agencies created prior to 1921 were organized as a single-headed bureau, namely, the Bureau of Efficiency, the Office of Alien Property Custodian, and the United States Railroad Administration. All of the other detached services were organized as boards, commissions, or committees, each having a chairman and an executive secretary, but neither of whom had any directing power other than that granted to them by the board or commission. During the year 1921, however, two independent agencies were created with the bureau form of organization. The first of these two services, the General Accounting Office, in charge of a Comptroller General, was created by the Budget and Accounting Act, approved June 10, 1921. The major functions of this independent office are those previously

<sup>41</sup> 41 Stat. L., 456, 470; Congressional directory (December, 1921), 362; Institute for Government Research, Railroad Labor Board (1923).

<sup>42</sup> 41 Stat. L., 1063; Congressional directory (December, 1921), 379; Federal Power Commission, Annual report, 1922, 6-8; Institute for Government Research, The Federal Power Commission (1923).

conferred upon the former Comptroller of the Treasury and the six Auditors of the Treasury Department. Mention has already been made in a foregoing chapter of the unusual provision whereby the Comptroller General, who is appointed for a term of fifteen years, can only be removed by impeachment or joint resolution of Congress. This provision, which was adopted in order to free the Accounting Office from executive influence, is in striking contrast to the organization of the other detached services, the officers of which, although generally appointed for a seven- or nine-year term, are removable by the President for cause.<sup>43</sup>

**Bureau of the Budget.** In addition to the establishment of the General Accounting Office, the act of June 10, 1921, created a Bureau of the Budget, which, although nominally under the jurisdiction of the Treasury Department, is in reality an independent service directly responsible and subject only to the President. The Director and Assistant Director of the Budget are appointed by the President without Senate confirmation, and are therefore removable by him at any time. The Bureau of the Budget has been the medium through which the President has established, by Executive order, a number of coördinating agencies for the purpose of enabling him in matters of routine business to coördinate the activities of the different departments and establishments so as to insure the most efficient and economical expenditure of the money appropriated by Congress. The coördinating boards or committees thus established are the Permanent Conference on Printing, Federal Hospitalization Board, Federal Liquidation Board, Federal Purchasing Board, Interdepartmental Board of Contracts and Adjustments, Federal Specifications Board, Federal Traffic Board, and Federal Real Estate Board. These several agencies are composed of officers detailed from the various governmental departments, who are held directly responsible to the President rather than to the heads of their respective departments or establishments. In addition to these coördinating agencies in Washington, there are seven area coördinators in the field heading up the various districts into which the country is divided for purposes of administration. The entire

<sup>43</sup> 42 Stat. L., 20, 23; *Supra*, 292; Congressional directory (December, 1921), 354. The internal organization of the General Accounting Office is described in its annual report, 1922, 2 ff.

organization, with the exception of the Board of Hospitalization, whose chairman reports directly to the President, functions under the direction of the Chief Coördinator, General Supply, in whom are vested all powers for coördinating the business activities of the government by order of the President.<sup>44</sup>

**U. S. Veterans' Bureau; Debt Refunding Commission.** Another independent bureau of major importance was established by act of August 9, 1921, known as the Veterans' Bureau, to which were transferred the powers and duties pertaining to the Director of War Risk Insurance and certain of the powers previously exercised by the Federal Board for Vocational Education and the Public Health Service. This bureau is in charge of a Director appointed by the President, with the consent of the Senate, and is entirely independent of any of the executive departments.<sup>45</sup> Mention should be made of the Debt Refunding Commission created by act approved February 9, 1922, to be composed of five members, including the Secretary of the Treasury as *ex officio* chairman, and four others appointed by the President, with the consent of the Senate. This commission is authorized, subject to the approval of the President, to refund, or convert, and to extend the time of payment of the principal or the interest, or both, of any obligation of any foreign government now owing the United States or any obligation of any foreign government hereafter received by the United States. The commission, which is to terminate in three years, is required to submit annual reports to Congress and to report to the Senate after the conclusion of each refunding negotiation. The personnel of the commission, as nominated by the President on February 21 and confirmed by the Senate on April 11, consists of the Secretaries of the Treasury, State, and Commerce, and a member of each House of Congress.<sup>46</sup>

<sup>44</sup> Message of the president transmitting . . . the budget . . . and the report of the director of the bureau of the budget, 1921, 35, 24-30; Lindsay, Our new budget system, *Review of Reviews*, LXV, 64 et seq. (Jan., 1922); *Good Government*, Jan., 1922, 4; Addresses of the president and director of the budget, fourth regular meeting of the business organization of the government, Jan. 29, 1923, 16 ff.

<sup>45</sup> 42 Stat. L., 147. The title of the Veterans' Bureau was changed to United States Veterans' Bureau by act of August 24, 1921.—42 Stat. L., 202.

<sup>46</sup> *New York Times*, Feb. 1, 4, 10, and 22, and Apr. 12, 1922.

**Federal Narcotics Control Board.** By act of May 26, 1922, a Federal Narcotics Control Board was established, to consist of the Secretaries of State, Treasury, and Commerce, which was given extensive regulatory powers governing the import and export of narcotic drugs. The board functions through the Division of Customs in the Treasury Department, the law clerk of that division acting as its secretary with authority to pass upon applications and conduct correspondence for and on behalf of the Board.<sup>47</sup>

**Federal Fuel Distributor; U. S. Coal Commission.** The act of September 22, 1922, which declared a national emergency to exist in the production, transportation, and distribution of coal and other fuel, authorized the appointment by the President of a Federal Fuel Distributor, who should conduct investigations to determine the relative shortage of fuel in various sections of the country and in particular industries, the fields of production and principal markets, and the reasonableness of current prices, and should make recommendations to the Interstate Commerce Commission to insure an equitable distribution of the existing fuel supply so as best to meet the emergency and promote the general welfare. The powers of the Interstate Commerce Commission were enlarged to include the authority to issue priority orders, declare embargoes, and to take such other suitable measures in controlling the transportation of fuel as would tend to secure equitable distribution and prevent undue prices. The duration of the act was limited to one year from the date of its passage, with the provision that the President, by proclamation, might terminate the act prior to that time if, in his opinion, the national emergency had passed. The Office of Federal Fuel Administrator functions as an independent agency, although necessarily maintaining close working relations with the Interstate Commerce Commission.<sup>48</sup>

An act passed on the same date authorized the establishment of a United States Coal Commission, to be composed of not more than seven members appointed by the President, with the consent of the Senate, whose duty it should be to investigate and ascertain fully the facts and conditions and study the problems and questions relative to the coal industry for the purpose of assisting and advising

<sup>47</sup> 42 Stat. L., 596; Congressional directory (January, 1923), 393-96.

<sup>48</sup> 42 Stat. L., 1025; Congressional directory (January, 1923), 396-7.

Congress in matters of legislation aimed at insuring an adequate supply of this commodity to the industries and people generally throughout the country, and maintaining the uninterrupted flow of commerce among the states. The life of the commission was fixed at one year by the terms of the act.<sup>49</sup>

**Rapid Increase in the Number of Detached Agencies.** There can be no question but that the predominant factor which led Congress to create these detached boards and commissions was the nature of the powers vested in them. While all of these independent agencies were to exercise a degree of administrative power, yet they were also clothed with important quasi-judicial and quasi-legislative powers, which Congress did not deem it advisable to intrust to a department, bureau, or even to an independent service under the direction of a single officer. Furthermore, in each instance, Congress was extending the sphere of governmental control and supervision, and therefore endeavored to guard against the arbitrary exercise of such regulatory powers by placing them "in commission." President Cleveland is said to have remarked to Mr. George F. Parker in connection with the Interstate Commerce Act of 1887 that he "did not believe it was ever intended that Government should continually interfere with business," and that he feared lest "the use by independent bodies of the authority of the executive, whether in nation or state, should enable them to concentrate into their hands the great enterprizes of the country," and so lead to government operation. Yet "he well knew that there were abuses and grievances which demanded correction"; and so "in spite of reservations, I signed the bill."<sup>50</sup>

In spite of the misgivings of many executive, legislative, and judicial officers concerning the rapid extension of these independent boards and commissions, almost every Congress since 1913 has created one or more of them, and as long as that body continues to widen the sphere of federal control, their number will very likely continue to increase. The advisability of placing a large number, if not all, of these independent agencies under the jurisdiction of some one of the executive departments, will be discussed in connection with recent proposals for administrative reorganization.

<sup>49</sup> 42 Stat. L., 1023.

<sup>50</sup> *New York Times* (Editorial), Feb. 5, 1922.

## CHAPTER XXI

### ADMINISTRATIVE WAR AGENCIES

The participation of the United States in the World War, involving, as it did, the mobilization of the commercial, industrial, and agricultural, as well as the military, forces of the nation, resulted in the creation of a large number of special administrative services independent of the existing departments and permanent administrative establishments. In the foregoing chapters of this monograph an attempt has been made to point out the more important changes in the administrative organization of the several executive departments effected during the war period. It is now proposed to discuss briefly the establishment and organization of the special war agencies, which, because of the fact that the existing administrative organs of the national government were not adequately prepared, either in personnel, powers, or organization, to meet the pressing needs incident to the problems of mobilization for war, assumed a rôle of major importance during the period of emergency.<sup>1</sup> The scope of this chapter will not permit a discussion of the functions of these special war agencies, nor of the methods adopted by them in the performance of their work.<sup>2</sup> The present study will be con-

<sup>1</sup>This situation has been succinctly stated by Mr. Frederick Keppel as follows: "It is a striking commentary upon the dislocations that come in the train of modern warfare that so little of what had to be done seemed to fit into the framework of the existing administrative organisms. Here and there a government bureau with an ambitious and competent head seized the chance to develop its work to war-time size, but in general the established services went their accustomed ways. If we except the greater part of the activities of the Navy and the problems of military training and strategy, we find almost uniformly that some entirely new machine was built to meet the war-time need. Often three or four successive machines were set up, only to be scrapped, before we found one that would function properly. This does not imply a general condemnation of our peace-time governmental organization. It is rather a commentary upon the desperate seriousness of going to war in these days." Cf. Willoughby, *Government organization in war time and after*, xvi (1919).

<sup>2</sup>Two especially illuminating articles on this subject are the following: Paxson, The American war government, 1917-18, *American Historical Review*, XXVI, 54-76 (October, 1920); and Bogart, Economic organization for war, *American Political Science Review*, XIV, 587-606 (November, 1920).

fined chiefly to pointing out the important aspects of administrative war organization, in the light of the development of national administrative organization in the United States prior to 1917.

**Administrative War Agencies Established Prior to 1917.** The establishment of several detached administrative agencies previous to the entrance of the United States into the World War, which, although permanent in character, were essentially war agencies and which were greatly enlarged both in personnel and organization during the period of the war, has been discussed in the preceding chapter, and, consequently, needs only to be mentioned here. The first of these war agencies to be created was the National Advisory Committee for Aeronautics, organized pursuant to the naval appropriation act of March 3, 1915. This committee, as has been already pointed out, acted as an advisory council to the several governmental agencies concerned with aircraft production and operation during the war.<sup>3</sup> Mention also should be made of the Naval Consulting Board organized by order of Secretary Daniels in October, 1915, which was later recognized by congressional enactment. This board was primarily organized as a branch of the Navy Department, and, consequently, although during the war its services also were placed at the disposal of the Council of National Defense, its organization has been previously noted in connection with that department.<sup>4</sup>

The most important of the administrative war agencies created prior to 1917 was the Council of National Defense. As this service was organized on a permanent basis, its original organization has been discussed in the preceding chapter.<sup>5</sup> Its organization, together with that of its Advisory Commission, was greatly enlarged early in 1917 in preparation for war. Seven major committees were created, each in charge of one of the members of the Advisory Commission, and composed of civilian experts and administrators who volunteered their services to the council. These committees, in turn, created special boards, such as the Railroads' War Board organized on April 11, 1917, by the Committee on Transportation, and the Munitions Standards Board created on February 28, 1917,

<sup>3</sup> 38 Stat. L., 928, 930; *Supra*, 427.

<sup>4</sup> Scott, The naval consulting board of the United States, 10-23 (1920); *Supra*, 322.

<sup>5</sup> *Supra*, 428-29.

by the Committee on Munitions. The rapid growth in importance of the Advisory Commission, added to the fact that the council itself was composed of heads of departments burdened with their own departmental affairs, gave it practically a coördinate status with the council.<sup>6</sup>

Another important administrative war agency created prior to 1917, which, because of its permanent character, has also been discussed in the foregoing chapter, was the United States Shipping Board, established by act of September 7, 1916. To enable this board to carry out its functions with respect to the acquisition by construction, purchase, lease, or charter, of vessels suitable for use as naval auxiliaries in time of war, the act of 1916 authorized the organization of one or more corporations to have charge of this work. In the exercise of this authority, the United States Shipping Board Emergency Fleet Corporation was organized on April 16, 1917, under the laws of the District of Columbia, to which the board delegated all of its powers with respect to the acquisition and operation of vessels.<sup>7</sup>

**Aircraft Board; Committee on Public Information.** The importance of aircraft production led to the creation on April 12, 1917, by the Council of National Defense, of an Aircraft Production Board, which should coöperate with the officers of the army and navy, and of other departments interested in the production of aircraft. This board, which possessed only advisory powers and which had no legal status, was superseded by the Aircraft Board created by act of October 1, 1917. The chairman of the latter board was made Director of Aircraft Production by Executive order dated May 20, 1918, and issued under the authority of the Overman Act.<sup>8</sup> The urgent need for some agency to act as press censor and publicity agent for the government was recognized almost at the outset of American participation in the war by the creation of a Committee on Public Information on April 14, 1917,

<sup>6</sup> Paxson, *op. cit.*, 58-59; Emery and Williams, Governmental war agencies affecting business, 166-67 (1918).

<sup>7</sup> 39 Stat. L., 728; *Supra*, 429. The powers of the board relating to the acquisition and operation of vessels were greatly enlarged by subsequent legislation. Cf. Willoughby, *op. cit.*, 144-54.

<sup>8</sup> Willoughby, *op. cit.*, 331; 40 Stat. L., 206; Official Bulletin No. 315 (May 21, 1918), 1.

by order of the President, to be composed of the Secretaries of State, War, and Navy, and a civilian, who should be charged with the executive direction of the committee.<sup>9</sup>

**General Munitions Board.** In addition to the Munitions Standards Board noted above, the Council of National Defense created a General Munitions Board on March 31, 1917, which embraced the civilian personnel of the former board and in addition included in its membership representatives from the supply services of the War and Navy departments. These two boards were abolished and a War Industries Board created on July 28, 1917. This board was authorized to "act as a clearing-house for the war industry needs of the Government," but its powers, being purely advisory in character, were not equal to such a task. Accordingly, the President, through the medium of a letter written to Mr. Bernard M. Baruch requesting him to accept an appointment as chairman of the board, removed the board from the jurisdiction of the Council of National Defense, and made it an independent agency acting directly under his supervision. The status of this board was more clearly defined in an Executive order issued on May 28, 1918. The full powers conferred upon this board by the President permitted it to perform adequately the great task of mobilizing the industries of the nation for the conduct of the war. Among the important agencies coöperating with this board may be mentioned the Price Fixing Committee, the Priorities Board, and the Purchasing Commission for the Allies.<sup>10</sup>

**U. S. Food and Fuel Administrations.** The vital importance of an adequate food supply for the United States as well as for the Allies, led to the adoption of a policy of food control almost at the outset of the war. Herbert Hoover, who had been chosen by the Council of National Defense to act as chairman of its committee on food supply and prices, was appointed by the President on May 19, 1917, as Food Administrator. In a letter addressed to Mr. Hoover on June 12, 1917, the President authorized him to take

<sup>9</sup> National service handbook, 16 (1917); Official Bulletin No. 1 (May 10, 1917), 4.

<sup>10</sup> Official Bulletin No. 2 (May 11, 1917), 5; *Ibid.*, No. 68 (July 30, 1917), 7; *Ibid.*, No. 250 (March 6, 1918), 1; *Ibid.*, No. 323 (May 31, 1918), 1; Paxson, *op. cit.*, 67-72; Willoughby, *op. cit.*, 70-114.

necessary steps to eliminate, as far as possible, the waste of food. Rules for voluntary observance in food conservation were promulgated on July 7, 1917. All of these measures were effected by authority of the President, and it was not until August 10, 1917, that Congress specifically authorized the creation of a Food Administration and clothed it with adequate powers for food control. For the exercise of its powers with respect to the control of grain and sugar, the Food Administration organized, respectively, the United States Grain Corporation on August 14, 1917, and the Sugar Equalization Board on July 11, 1918.<sup>11</sup> The act of August 10, 1917, also granted to the President important powers relating to the control of fuel. Accordingly, the United States Fuel Administration, in charge of a Fuel Administrator, was created by Executive order dated August 23, 1917.<sup>12</sup>

**War Trade Council and War Trade Board.** Under authority of the so-called Espionage Act of June 15, 1917, which conferred upon the President full power to control all exports from the United States, that officer issued an order on June 22, 1917, for the establishment of an Exports Council to advise him in the exercise of the powers thus conferred upon him. The actual administration of the act was vested in the Secretary of Commerce, who organized on July 9, 1917, a Division of Exports and Licenses in the Bureau of Foreign and Domestic Commerce to perform the work. The provision of the order of June 22 vesting authority in the Secretary of Commerce to administer the system of exports-control was revoked by a subsequent order issued on August 21, 1917, which created an Exports Administrative Board for this purpose, to be composed of representatives of the Secretaries of State, Agriculture, and Commerce, the Food Administration, and the Shipping Board. Following the passage of the Trading-with-the-Enemy Act of October 6, 1917, conferring upon the President control over imports, that officer issued an Executive order on October 12, 1917, creating two new agencies, to be known as the War Trade Council and the War Trade Board, which should supersede and take over the duties of the Exports Council and the Exports Administrative Board, in

<sup>11</sup> Paxson, *op. cit.*, 60-61, 63-64; Official Bulletin No. 83 (August 16, 1917), 3; *Ibid.*, No. 358 (July 12, 1918), 1; Bogart, *op. cit.*, 593; 40 Stat. L., 276.

<sup>12</sup> Official Bulletin No. 90 (August 24, 1917), 1; Emery and Williams, *op. cit.*, 107.

addition to exercising the powers conferred upon the President by the act of October 6, 1917. The composition of these two boards was similar to that of their predecessors, except for the addition of the Secretary of the Treasury to the War Trade Council and an officer representing him to the War Trade Board. An Executive order of August 30, 1918, granted membership on the War Trade Board to a representative of the War Industries Board.<sup>13</sup>

**Alien Property Custodian; Censorship Board.** The Trading-with-the-Enemy Act made provision for the taking over by the Government of the United States of all property situated within the United States or any of its possessions belonging to an enemy alien, and authorized the President to appoint an Alien Property Custodian to hold and administer such property under his general direction. Mr. A. Mitchell Palmer was appointed to that office by the President on October 12 and the Executive order issued on that date creating the War Trade Council and the War Trade Board also conferred the powers of the President with respect to the seizure and sequestration of enemy property upon the Alien Property Custodian.<sup>14</sup> This order also created a Censorship Board, composed of representatives of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board, and the Chairman of the Committee on Public Information, and charged with the duty of censoring communications sent by mail, cable, radio, or other means of transmission between the United States and any foreign country.<sup>15</sup>

**Railroads' War Board; U. S. Railroad Administration.** The heavy burdens placed upon the railroads in the United States during the war necessitated the taking of measures looking toward the unification of all the railroad facilities into one system, in order to avoid duplication in service and to use the rolling stock and terminal equipment of all roads to the best possible advantage. The first step in this direction was the creation by the American Railway

<sup>13</sup> Official Bulletin No. 40 (June 26, 1917), 4; *Ibid.*, No. 135 (October 17, 1917), 6; Willoughby, *op. cit.*, 122-31; Emery and Williams, *op. cit.*, 62; Paxson, *op. cit.*, 64-65; 40 Stat. L., 217; 411.

<sup>14</sup> 40 Stat. L., 411, 415; Official Bulletin No. 135 (October 17, 1917), 6; Willoughby, *op. cit.*, 319-26.

<sup>15</sup> Official Bulletin No. 135 (October 17, 1917), 7; Emery and Williams, *op. cit.*, 180.

Association, at the instance of the Committee on Transportation and Communication of the Council of National Defense, of an Executive Committee of five railroad presidents, which became known as the Railroads' War Board. The chairman of the Committee on Transportation and Communication of the Council of National Defense, Mr. Daniel Willard, and a member of the Interstate Commerce Commission, served as *ex officio* members of this board, which undertook to provide for the more effective utilization of railroad facilities, reductions in passenger train service, and the reciprocal use of tracks and terminals.<sup>18</sup>

The organization and powers of this board, however, were not adequate to meet the needs of the situation. A special report submitted to Congress by the Interstate Commerce Commission on December 1, 1917, emphasized the necessity of a complete unification of the railroad system of the country, either by the repeal of existing laws preventing a merger of railroad companies under private management, or by government operation and control. President Wilson determined to adopt the second of these alternatives. Authority had already been granted to the President by Congress in an act of August 29, 1916, to take such action in time of war. Accordingly, by a proclamation issued on December 26, 1917, the President announced his intention to exercise this authority, and provided for the creation of a Railroad Administration, in charge of a Director General of Railroads, to have entire charge of the operation of the railroads placed under government control. The Secretary of the Treasury, Mr. William G. McAdoo, was designated as Director General of Railroads by the President. His authority was later confirmed and continued by the issuance of a proclamation on March 29, 1918, in accordance with the provisions of the Railroad Control Act of March 21, 1918. The Railroad Administration assumed direct management of the roads through the appointment of Federal managers and the establishment of a system of regional directorships. By subsequent orders, the Railroad Administration was also given jurisdiction over coastwise steamship lines, inland waterway transportation, the American Railway Express Company, and the Pullman Company,

<sup>18</sup> Paxson, *op. cit.*, 66; Willoughby, *op. cit.*, 169-71; Official Bulletin No. 25 (June 8, 1917), 7; War cyclopedia (1st ed.), 229, 273.

thus uniting under one central control practically all of the internal transportation agencies of the country.<sup>17</sup>

**War Labor Administration.** The organization of the war labor administration has already been discussed in a preceding chapter dealing with the Department of Labor. The appointment of the Secretary of Labor as Labor Administrator served to unite the war organization with the department. The essential feature of that organization, as has been noted, was the determination of governmental labor policies by a central agency, the War Labor Policies Board, to be applied to the several industrial sections and branches in the production departments of the government, and the establishment of a War Labor Board to act as a supreme court of arbitration for the adjudication of labor disputes.<sup>18</sup>

**War Finance Corporation; Capital Issues Committee.** Upon the recommendation of the Secretary of the Treasury, Congress authorized the creation of a War Finance Corporation and a Capital Issues Committee by act of April 5, 1918. The management of the former was vested in a board of directors consisting of the Secretary of the Treasury, as *ex officio* chairman, and four other persons appointed by the President, with the consent of the Senate. The function of this agency, speaking in general terms, was to grant financial aid to undertakings engaged in war work or in operations contributory to the prosecution of the war. Except in certain instances, however, the loans of the corporation were required to be made to banking associations and trust companies, who might, in turn, make direct loans to individuals and corporations. The Capital Issues Committee, created by this act, was to be composed of seven members appointed by the President, with the consent of the Senate, at least three of whom should also be members of the Federal Reserve Board. This committee was empowered to investigate and pass upon the desirability, from the standpoint of compatibility with the national interest, of any new issue of securities

<sup>17</sup> 39 Stat. L., 619, 645; 40 Stat. L., Pt. 2, 89; 119; 40 Stat. L., 451; Emery and Williams, *op. cit.*, 39-52; Bogart, *op. cit.*, 597; Willoughby, *op. cit.*, 172-75, 178-81.

<sup>18</sup> *Supra*, 411, 413.

in excess of \$100,000. The life of both of these agencies was limited to six months after the termination of the war.<sup>19</sup>

**War Cabinet; Central Bureau of Planning and Statistics.** Two other special war agencies deserve mention. The first of these, commonly called the "war cabinet," was organized by the President on March 20, 1918, to be composed of the chiefs of the six major war services.<sup>20</sup> The second was a Central Bureau of Planning and Statistics, organized as a branch of the War Industries Board on June 1, 1918, in an effort to coördinate the statistical work performed by bureaus or divisions of the Shipping Board, the War Trade Board, and the Council of National Defense.<sup>21</sup>

**Distinctive Features of War Administrative Organization.** In concluding this brief survey of war administrative organization, attention is called to some distinctive features of that organization. In the first place, the mere number of independent agencies created during the war period is remarkable. At the outset, the Council of National Defense undertook to direct the work of mobilization for war, through the creation of committees. This loose form of organization, however, added to the fact that the powers of the council as well as those of its subordinate agencies were purely advisory in character, did not fit that body to act as the central coördinating agency for the war administration. Administrative boards were created to deal with special problems, which gradually took over the functions of the council and its several committees. Secondly, the organization of the war administration was largely the result of executive action, rather than of legislative enactment. Congress was content to grant broad powers of control to the President, permitting him to effect the necessary organization for the execution of those powers. Obviously, this was the logical

<sup>19</sup> 40 Stat. L., 506, 512. Prior to the passage of this act, the Federal Reserve Board had organized a Capital Issues Committee in January, 1918, and a series of sub-committees in each of the federal reserve districts to give advice respecting priority of importance among the numerous private appeals for funds.—Paxson, *op. cit.*, 72; Willoughby, *op. cit.*, 53-60; Emery and Williams, *op. cit.*, 36-39; Official Bulletin No. 286 (April 17, 1918), 16; *Ibid.*, No. 291 (April 23, 1918), 12; *Ibid.*, No. 297 (April 30, 1918), 10; *Ibid.*, No. 303 (May 7, 1918), 11, 16.

<sup>20</sup> Paxson, *op. cit.*, 71.

<sup>21</sup> *Ibid.*, 73-74.

thing to do, especially after the passage of the Overman Act granting to the President complete control over the administrative machinery of the national government as used for the prosecution of the war.

Another interesting feature of war administrative organization was the creation of large corporations for the performance of certain specific activities relating to the conduct of the war. The advantage derived from thus distinctly segregating a special activity from all other activities suggests the adoption of a similar form of organization for some of the permanent peace-time activities of the national government. Finally, it should be noted that no provision was made for a central administrative agency or "clearing-house" to coördinate the work of all the war agencies. The War Industries Board assumed this function, as far as the mobilization of material resources was concerned, and the resulting increase of efficiency and coördination of effort is an evidence of the value such a central agency would have possessed for the entire war administrative machine.

## CHAPTER XXII

### THE PRESIDENT AS ADMINISTRATOR-IN-CHIEF

In concluding a survey of the development of national administrative organization in the United States, it seems desirable to examine briefly the position which the President occupies with respect to national administration, especially as a result of the Budget and Accounting Act of 1921.

**Administrative Powers of Congress.** In the introductory chapter of this study an effort was made to determine the constitutional status of the administrative branch of the national government. To that end, attention was directed to significant grants of authority in the Constitution and the interpretations placed upon them by students of constitutional law. Such an inquiry led to the conclusion that Congress, and not the President, legally was vested with the power of direction, supervision, and control of administrative affairs.

**The President as Head of the National Administration.** Recognizing this legal omnipotence of Congress, however, it was pointed out that certain factors have so modified the constitutional control of Congress over administration that the President has come to be considered, and rightly so, as the head of national administration in the United States. In the first place, the President's powers of appointment and dismissal enable him, in the absence of direct authority to issue orders, to control the acts of administrative officers by removing those who do not follow his wishes and appointing others who will. The exercise of direction and supervision by the President in this manner has become an established convention, receiving popular as well as official sanction. Secondly, the Constitution, in making it the duty of the President to see that the laws are faithfully executed, confers upon him responsibility for the conduct of administrative affairs in so far as putting into effect the orders of Congress are concerned.

Concentration of administrative supervision and control in the hands of the President is made possible also by the fact that the Constitution grants to him specific authority over particular branches of administration, such as the control of foreign relations and the command of the army and navy. Finally, Congress has adopted the policy of specifically conferring upon the President administrative duties and responsibilites. The practice has steadily increased in scope and was especially evident during the World War. Congress has been forced by the growing complexity of administrative problems to content itself with laying down broad lines of governmental policy, intending that the details of administration shall be determined by the President and promulgated by means of executive orders and regulations.<sup>1</sup>

**Need for an Organ of General Administration.** Whatever the powers of the President may be from a strictly legal standpoint, the various factors enumerated above have served to establish firmly the position of the President as head of the administration. But, as was pointed out by those who urged upon Congress the adoption of a national budget system, the President has been unable effectively to perform the duties of his position because he has had no organization through which he could keep in touch with the conduct of administrative affairs and exercise that general direction, supervision, and control over the manner in which such affairs are conducted, as is necessary in order to assure himself that the public business is properly performed.

The need for an organ of general administration was emphasized by Mr. W. F. Willoughby, in discussing "The Problem of a National Budget," as follows: "Manifestly, if the Chief Executive is properly to perform his function of administrator-in-chief, he must be furnished with some organ through which he may effectively discharge the large responsibilities thus thrown upon him. There must be some service whose duty it is to prescribe the system of accounting and reporting that shall be employed by all services of the government, to receive the reports as rendered, compile them and analyze their contents in such a form that the Chief Executive can currently keep in touch with the conduct of administrative affairs, to prescribe the manner and form in which estimates shall be sub-

<sup>1</sup> *Supra*, 16 ff.

mitted, and to compile such data for budgetary purposes; to make such investigation into the manner in which the several services are organized, the methods employed by them and their needs as will enable the Chief Executive to assure himself that such services are properly organized and conducted and to determine for himself the propriety of their demands; and, finally, to take all steps needed to ensure a proper standardization of personnel and administrative practices without which due economy and efficiency cannot be secured nor, what is of immediate concern here, a proper budget prepared.”<sup>2</sup>

The same author, in describing the system of national finance prior to the passage of the Budget and Accounting Act, 1921, wrote: “There was no conception in the minds, either of the public, Congress, or the President himself, that the latter should actively assume and discharge the duties of administrator-in-chief of the government as a business corporation. The President made no pretense of laying before Congress a carefully thought out financial and work program representing his judgment as to the provision that should be made for the conduct of governmental affairs. He did not even submit to Congress a consolidated statement of expenditures in a form permitting that body or the people to judge intelligently regarding past operations. Nor did he exercise any direct control over the spending departments to see that the funds that were granted to them were expended in an efficient and economical manner. Even were he so minded, there was absolutely lacking any agency through which the President might attempt to discharge these duties. The attempt, in a word, was being made to run this government without any general business manager.”<sup>3</sup>

General Charles G. Dawes, in his first annual report to the President as Director of the Bureau of the Budget, declared that heretofore all of the defects in the routine business administration of the government resulted directly from the fact that “the president of the corporation gave practically no attention to its ordinary routine business. He avoided his responsibility for the proper conduct of

<sup>2</sup> Willoughby, The problem of a national budget, 33 (1918).

<sup>3</sup> Willoughby, National financing—the old way and the new, *Congressional Digest*, November, 1922, 41.

the business of the corporation, and neither assumed nor delegated active control over it.”<sup>4</sup>

**Bureau of the Budget Functions as an Organ of General Administration.** In establishing a national budget system for the United States, Congress provided in the Budget and Accounting Act, 1921, for an organ of general administration, designated the Bureau of the Budget. The internal organization of this bureau has been sufficiently described in a preceding chapter.<sup>5</sup> We are here concerned with the Bureau of the Budget as the means whereby the President is enabled, for the first time, to perform his function as the directing head of the business organization of the government.

General H. M. Lord, the present Director of the Bureau of the Budget, sets forth in a very definite manner the exact function of that agency in the following paragraph, taken from his address delivered at the Fourth Regular Meeting of the Business Organization of Government held on January 29, 1923: “This Bureau was created as an instrumentality directly under the control of the President for the purpose of enabling him to make effective his responsibility to Congress and to the country for the efficient exercise of his administrative authority over the operation of the Budget and over the expenditure of funds thereunder appropriated for the support of the government. It was established solely upon the principle of presidential responsibility, and it is given no function under the Budget and Accounting Act which it can exercise independently of the President. This is as it should be, for the President is the head of the business organization of the United States Government.”<sup>6</sup>

In organizing the Bureau of the Budget as an administrative agency through which he could gain a direct and impartial view of the business operations of the government as a whole, and through which he might exercise executive pressure and impose business policies as the active head of the governmental business adminis-

<sup>4</sup> Message of the president transmitting to Congress the budget for the fiscal year ending June 30, 1923, and the report of the director of the bureau of the budget, 1921, 21.

<sup>5</sup> *Supra*, 291, 437.

<sup>6</sup> Addresses of the president and director of the budget, fourth annual meeting of the business organization of government, Jan., 1923, 9.

tration, the President, acting upon the advice of the Director of the Budget, has designated a Chief Coördinator and has charged him, under the general direction of the Director of the Bureau of the Budget, with the responsibility of representing the President in the application of uniform business principles and methods to the expenditure of public funds. In order to provide the necessary interdepartmental contact and to develop business information, there was established under the Chief Coördinator a number of coördinating boards relating to certain specific business activities of the government.<sup>7</sup>

The purposes which motivated the President in establishing these coördinating agencies are disclosed in the Executive order issued on November 8, 1921, prescribing rules and regulations with regard to the preparation and submission of the budget and the conduct of the Bureau of the Budget. Paragraph 5 of that order reads as follows:

"The coördinating agencies established by the Executive are for the purpose of enabling the President, in matters of routine business, to so coördinate the activities of the different departments and establishments as will insure the most economical and efficient expenditure of moneys appropriated by Congress. They provide the machinery, through which, with the minimum of obstruction and delay, the Executive may impose a unified plan of governmental routine business. The Director of the Bureau of the Budget shall have general supervision over the work of the coördinating agencies heretofore created by Executive order, subject to such instructions as may hereafter be issued by the President."<sup>8</sup>

President Harding, in his address delivered at the Fourth Regular Meeting of the Business Organization of Government, indicated his satisfaction with the work of the several coördinating agencies thus established. In part he said: "I am kept advised by the Director of the Bureau of the Budget of the constructive work being done by the various coördinating agencies and area coördinators under the immediate leadership of the Chief Coördinator, and of the value of the work being done by the several coördinating boards composed of the representatives of the departments and

<sup>7</sup> For the titles of the boards or agencies thus created, see *Supra*, 437-38.

<sup>8</sup> Director of the Bureau of the Budget, Annual report, 1922, 82.

establishments. These coördinating agencies are accomplishing the purpose for which they were created, to provide the machinery through which to coördinate the activities of the departments and establishments so as to guarantee the most provident and efficient expenditure of public funds and to furnish the Executive an agency for imposing a unified, concerted plan of governmental routine business. The results attained show how admirably these important agencies are functioning. They are performing a most important part in the task of developing teamwork, instituting economies, and applying business principles to government routine operations. These efforts have the interest and cordial endorsement of the Chief Executive.”<sup>9</sup>

**President's Responsibility for Maintaining His Position as Administrator-in-Chief.** The maintenance of his position as head of the business organization of government or administrator-in-chief, which the President has attained through the Bureau of the Budget for the first time in the history of the United States, will depend very largely upon the vigorous and persistent manner in which the President himself assumes all of the great responsibilities devolving upon this direct leadership. This latter point was very emphatically proclaimed by General Dawes, Director of the Bureau of the Budget, in his first annual report: “It cannot be too often reiterated that this most important reformation in the governmental business system is dependent upon the President of the United States himself, and upon his continued assumption of his responsibility as its business head. The minute he relaxes his attitude or attention to this duty there will be felt the natural pull of the departments and establishments toward the old system of complete independence and decentralization. This is because of laws firmly embedded in human nature which have existed since man began. Budget laws or other legislative enactments cannot change human nature, and, while compelling the letter of coöperation, can not compel its spirit, which is, above all things, essential in business organization. The President, and the President alone, can do this, for his attitude toward the heads of the departments and the independent establishments is a matter constantly in their minds. What

<sup>9</sup> Addresses of the president . . . at the fourth regular meeting of the business organization of government, Jan. 29, 1923, 4.

he desires it becomes their interest as well as their duty to do, where consistent with right principles and in accordance with law. In the absence of his expressed desire what becomes their selfish interest in action is inevitably along the lines of decentralization and the reestablishment of the old condition of things, with everything running haphazard.”<sup>10</sup>

**Need for Administrative Reorganization.** One other important step remains to be taken in order that the President may perform, in an efficient manner, his function as administrator-in-chief, namely, a regrouping of administrative services and a redistribution of activities so that it will be possible for him, through the Budget, to formulate and present to Congress a definite financial and work program for each ensuing fiscal year. The desirability of such administrative reorganization was clearly recognized in the Budget and Accounting Act, 1921. Section 209 of that law provides as follows: “The bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services.”<sup>11</sup>

In view of the fact, however, that Congress, through a joint resolution of December 17, 1920, created a Joint Committee on the Reorganization of the Administrative Branch of the Government, which was later amended to permit the President to designate a personal representative on the committee, the Bureau of the Budget has not undertaken any work of this character, except in so far as it has served as an agent for the committee in gathering information.<sup>12</sup> The importance of administrative reorganization in furthering the reform instituted by the President, through the Bureau of the Budget, was emphasized in the first annual report of the

<sup>10</sup> Message of the president . . . and the report of the bureau of the budget, 1921, 36.

<sup>11</sup> 42 Stat. L., 20, 22.

<sup>12</sup> 41 Stat. L., 1083; 42 Stat. L., 3.

Director of the Budget as follows: "There exists in the present grouping of activities under the departments a juxtaposition in many cases of activities so entirely unrelated to each other in their nature and scope that a regrouping of them will result in not only a larger measure of direct coördination by a single supervising authority, but in a more effective common functioning."<sup>13</sup>

The present movement in favor of administrative reorganization, the specific proposals submitted, and the progress made up to the present time, will be discussed in the following chapter.

<sup>13</sup> Message of the president . . . and the report of the director of the bureau of the budget, 1921, 43-45.

## CHAPTER XXIII

### ADMINISTRATIVE REORGANIZATION

The development of national administration in the United States, as outlined in the foregoing chapters, has proceeded largely along lines laid down by successive enactments of Congress and with a view to meeting specific needs as they have arisen, without any attempt to bring into existence a thoroughly harmonious and logical grouping of administrative services, based upon a similarity of duties and of major purpose. Partial efforts have been made in this direction when the creation of a new department was under consideration, as in 1849 and in 1903, but in no case have these attempts taken in the whole of the administrative branch of the national government. This situation was briefly explained by President Taft in a special message to Congress on January 17, 1912, which was accompanied by a report on the Outline of Organization of the United States Government prepared by his Commission on Economy and Efficiency: "This vast organization has never been studied in detail as one piece of administrative mechanism. Never have the foundations been laid for a thorough consideration of the relations of all of its parts. No comprehensive effort has been made to list its multifarious activities or to group them in such a way as to present a clear picture of what the Government is doing. Never has a complete description been given of the agencies through which these activities are performed. At no time has the attempt been made to study all of these activities and agencies with a view to the assignment of each activity to the agency best fitted for its performance, to the avoidance of duplication of plant and work, to the integration of all administrative agencies of the Government, so far as may be practicable, into a unified organization for the most effective and economical dispatch of public business."<sup>1</sup>

**Work of the President's Commission on Economy and Efficiency.** The Commission on Economy and Efficiency undertook as

<sup>1</sup> 62 Cong. 2 sess. (1911-12), H. ex. doc. 458, 4.

one of its distinct activities to make a thorough study of the organization and activities of the national government, with a view to the formulation of proposals by which economy and efficiency might be introduced into administration. In addition to the preparation of a complete outline of the organization of the government, as noted above, this commission prepared a series of monographs descriptive of the history, activities and organization of a number of administrative services, and, on the basis of the information thus secured, prepared a number of reports recommending the abolition of certain services and the consolidation of others. The reports of the commission were transmitted to Congress by the President with his approval, but no action was taken upon them, and the commission was abolished because of lack of appropriations for its support.<sup>2</sup>

**Powers of the Bureau of Efficiency.** The duties of the Division of Efficiency, established on March 25, 1913, as a branch of the Civil Service Commission, were enlarged by act of March 4, 1915, to include the "investigation of the needs of the several executive departments and independent establishments with respect to personnel; and for investigation of duplication of statistical and other work and methods of business in the various branches of the government service." The Division of Efficiency, established as an independent bureau by act of February 28, 1916, is thus vested with authority to investigate the need for administrative reorganization and report thereon to Congress, but it has never seen fit to exercise that authority, possibly due to the comparatively brief period of its existence.<sup>3</sup>

**Establishment of Joint Committee on Reorganization.** The rapid expansion of governmental activities, involving the creation of a large number of new administrative services, has served to emphasize the need for administrative reorganization pointed out by President Taft in 1912. By a joint resolution of December 29, 1920, Congress created a Joint Committee on Reorganization, to be composed of three members of each House of Congress, appointed by the President of the Senate and the Speaker of the House, whose duty it should be "to make a survey of the adminis-

<sup>2</sup> Weber, *Organized efforts for the improvement of methods of administration in the United States, 91-93* (1919).

<sup>3</sup> *Ibid.*, 104-06; 38 Stat. L., 997, 1007; 39 Stat. L., 14, 15.

trative services of the government for the purpose of securing all pertinent facts concerning their powers and duties, their distribution among the several executive departments and their overlapping and duplication of authority; also to determine what redistribution of activities should be made among the several services, with a view to the proper correlation of the same, and what departmental regrouping of services should be made, so that each executive department shall embrace only services having close relation with each other and ministering directly to the primary purpose for which the same are maintained and operated, to the end that there shall be achieved the largest possible measure of efficiency and economy in the conduct of government business." This committee was directed to report to Congress from time to time on the progress of their work, to submit recommendations, and to prepare bills or resolutions embodying the results of its investigations.<sup>4</sup>

At the suggestion of President Harding, Congress passed a supplementary joint resolution, approved May 5, 1921, authorizing the President to appoint a representative of the executive to coöperate with the Joint Committee on Reorganization, whose salary should be paid in equal parts from the contingent funds of the Senate and House.<sup>5</sup> President Harding appointed Mr. Walter F. Brown as his personal representative on the committee, who was made the chairman of that body. On June 13, 1921, the President addressed a letter to the joint committee embodying the general conclusions of the Cabinet with respect to administrative reorganization, which it seems desirable to quote fully here: "Since it is extremely difficult to administer efficiently departments which include wholly dissimilar and unrelated services, and quite impossible to administer economically identical or similar services which are scattered throughout several departments, it would seem necessary at the outset of the work of reorganization to provide a statutory regrouping of governmental activities to the end, as far as practicable, that each department be made up of agencies having substantially the same major purpose and, further, that identical or similar services shall be grouped together. This task accomplished, the work of eliminating duplication by consolidation and otherwise, and of

<sup>4</sup> 41 Stat. L., 1083; *New York Times*, December 15, 1920.

<sup>5</sup> *New York Times*, April 16, 1921; 42 Stat. L., 3.

devising efficient administrative methods for the several departments could then be taken up in logical order and prosecuted effectively. The executive and cabinet are of one mind that a bill reallocating the governmental services upon the principle above outlined should be prepared and strongly recommended to Congress for as speedy passage as possible, in order that there may be no unnecessary delay in bringing about the governmental economies which our duty enjoins upon us and which the whole country is demanding and expecting. To this end we pledge your committee our hearty consideration." In reply to the President, Chairman Brown assured him that the "members of the committee are entirely in accord with your suggestion that a bill reallocating the governmental services upon the principle of major purpose be prepared and urged for passage by Congress as speedily as possible."<sup>6</sup>

**Proposals for Administrative Reorganization.** In view of the fact that administrative reorganization is thus given a place of importance in the reform program of the present administration, a number of proposals have been made by individuals or institutions outside of official circles with the hope that they might receive consideration by the Joint Committee on Reorganization. The two most comprehensive programs, of which the writer has cognizance, are those prepared by the Institute for Government Research of Washington, D. C., and the National Budget Committee of New York City. While these two proposals vary to a considerable degree in the exact changes advocated, they approach the problem from a similar viewpoint. Both are restricted to a consideration of the proper grouping of existing services and a proper distribution of the functions of government among those services. Neither advocates changes in the fundamental principles of the existing governmental structure, nor do they seek to curtail or extend the powers and functions which have been undertaken by the national government. A brief analysis of these two proposals will furnish a basis for the further consideration of administrative organization.<sup>7</sup> Here, as in the foregoing chapters of this monograph, emphasis

<sup>6</sup> *New York Times*, June 14, 1921.

<sup>7</sup> Willoughby, The reorganization of the administrative branch of the national government, 1923; National Budget Committee, A proposal for government reorganization, 1921.

will be placed upon the effect such reorganization will have upon the general system of administrative organization rather than upon the efficient performance of governmental activities.

**Recommendations Submitted by the Institute for Government Research.** The plan prepared by the Institute for Government Research lays down the following principles as fundamental in any program of administrative reorganization: (1) That the type of organization to be adopted should be known as the Integrated or Departmental; (2) that a clear distinction should be made between those services which are of a purely administrative character and those which are of a quasi-legislative, quasi-judicial, or other special character, and that the attempt to apply the principle of departmentalization should only be made in reference to the first; (3) that the principle of departmentalization should be that of grouping services according to their purpose or function rather than the character of activities engaged in; and (4) that each department should, as far as practicable, be made unifunctional in the sense that it will embrace only those services whose special functions pertain to the general function for the performance of which the department is established.<sup>8</sup>

Proceeding upon the basis of the principles enunciated above, the following general changes are recommended: (1) The removal of all purely administrative services, such as the Government Printing Office and the Library of Congress, from the jurisdiction of Congress, and grouping them with other services whose activities fall in the same general field; (2) the transfer of the Bureau of the Budget from the Treasury Department to the Executive Office of the President, and the absorption by it of the Bureau of Efficiency, now organized as an independent establishment; (3) the creation of two new bureaus in the State Department, namely, Bureau of Territories and Dependencies and Bureau of International Organizations, and the possible consolidation of the Diplomatic and Consular Services into a single Foreign Relations Service; (4) the transfer to other departments of all bureaus and offices now located in the Department of the Treasury which perform activities unrelated to the major function of that department, namely, the administration of national finance; (5) the consolidation of the War and

<sup>8</sup> Willoughby, *op. cit.*, 5-17.

Navy departments into a single Department of National Defense; (6) a reorganization of the Department of Commerce, involving the transfer of existing services both to and from that department, in order to group together in one department all government agencies having to do with manufactures, transportation, and trading; (7) the abolition of the Department of the Interior and the transfer of its services to other departments; (8) the creation of three new executive departments, namely, Public Works and Public Domain, Education and Science, and Public Health; and (9) the creation of two new independent agencies, namely, the Service of General Supply, including the Civil Service Commission, the Government Printing Office, the Bureau of Engraving and Printing, and other general supply services, and a Pension and Insurance Service, to include the Bureau of Pensions, the Veterans' Bureau, and the United States Employees' Compensation Commission. All of the existing independent establishments, except the Interstate Commerce Commission, the Federal Trade Commission, and the Shipping Board, are placed under the jurisdiction of some one of the executive departments or are abolished and their duties transferred to other agencies. The three agencies which constitute exceptions to this proposal are continued as independent establishments because they are primarily engaged in the exercise of quasi-judicial and quasi-legislative powers.<sup>9</sup>

It is impossible to indicate here in detail the proposed regrouping of existing bureaus and services among the several executive departments and independent establishments. It is sufficient to note that all of the executive departments provided for are of a strictly unfunctional character, in that all of the services transferred to or continued under their respective jurisdictions have as their special function the performance of duties pertaining to the general function of the departments in which they are to be located. All of the existing independent agencies which perform purely administrative duties are placed in some one of the executive departments, while certain services now in those departments are set up as independent establishments because they are not functional services, in that they do not exist for the purpose of rendering services to the public.

<sup>9</sup> Willoughby, *op. cit.*, 51, 59, 60, 76-77, 105, 138-39, 257-58, 206-07, 226, 239, 265-71.

**Plan Prepared by the National Budget Committee.** The reorganization program, as proposed by the National Budget Committee, consists of "an accurate inventory and evaluation of the major objects and functions of the national Government as recognized by statute; a careful analysis of the organization and activities of existing agencies of government; a regrouping of those agencies by legislation so that service units operating in the same or analogous fields, whether judged by a functional or a mechanical standard, will be placed under the same general direction; and the subsequent consolidation, combination or elimination of agencies by executive action."<sup>10</sup> In accordance with the basic principles thus enunciated, the following general changes are proposed: (1) The abolition of the Department of the Interior and the substitution of a Department of Public Works, to embrace certain services now located in the Department of the Interior, the Department of Agriculture, the Department of the Treasury, and the Department of War, and several independent agencies—all of which are engaged in the performance of functions pertaining to public works; (2) the establishment of a Department of Education and Health, to have jurisdiction over certain services now located in the Department of the Interior, the Department of the Treasury, the Department of Labor, and several existing independent agencies; (3) the transfer to the Department of Commerce of certain services now under the jurisdiction of other departments, whose functions pertain to the promotion of commerce and navigation; (4) a reallocation of certain individual services, such as the transfer of the Office of Prohibition Commissioner, now in the Treasury Department, and the Office of Alien Property Custodian, now an independent agency, to the Department of Justice; the placing of the Botanic Garden, now under congressional supervision, in the Department of Agriculture; the transfer of the several department solicitors from the Department of Justice to the departments which they represent; the abolition of the office of Comptroller of the Currency and the transfer of its functions to the Federal Reserve Board; the abolition of the Board of Mediation and Conciliation and the transfer of its functions to the Department of Labor; the discontinuance of the Council of National Defense; and (5) the

<sup>10</sup> National Budget Committee, *op. cit.*, 8.

creation of two new bureaus, namely, a Bureau of Insular and Territorial Administration in the Department of State, and a Bureau of Supply, to be organized as an independent establishment.<sup>11</sup>

It will be observed that this latter program is very limited in the scope of the changes proposed, especially when compared with the proposals submitted by the Institute for Government Research. While reducing to some extent the number of independent agencies, it does not go nearly so far in the direction of a departmentalized system of administrative organization as advocated in the program outlined by the Institute for Government Research. Its essential features were embodied in a bill introduced in the Senate by Senator McCormick on December 7, 1920.<sup>12</sup>

**Mr. Ely's Novel Proposal.** A somewhat more novel proposal than either of those hitherto examined is that made by Mr. Owen Ely in the National Municipal Review for May, 1921. In an attempt to devise a scheme of reorganization on the basis of logical arrangement and business efficiency, without taking into account any legal or political considerations, Mr. Ely proposes that the administrative work of the national government shall be grouped under the direction of Secretaries of Social Policies, Commerce and Industry, Finance, Foreign Relations, National Defense, Legal Affairs, and an Executive Secretary.<sup>13</sup>

**New Departments Proposed; Reorganization of Department of Commerce.** In addition to these more comprehensive proposals for administrative reorganization, certain specific changes and the creation of one or more new departments have been repeatedly advocated both within and without official government circles. Senator Kenyon introduced a bill on May 5, 1921, for the creation of a Department of Public Welfare, whose functions should be divided under four general heads, namely, education, public welfare, including public health, social service, including the present Children's Bureau, and veteran service. The bill was reported as embodying the ideas of the President with respect to the creation of such a department.<sup>14</sup>

<sup>11</sup> *Ibid.*, 14-16.

<sup>12</sup> 66 Cong. 3 sess., S. bill 4542 (Dec. 7, 1920).

<sup>13</sup> Ely, The national government as a business organization, *Nat. Mun. Rev.*, X, 291-97.

<sup>14</sup> *New York Times*, May 6, 1921.

Secretary of Commerce Hoover, in his annual report of 1922, called attention to the fact that, excluding functions of a semi-judicial character now performed by independent agencies, there are still a large number of functions of the import designated in the organic act creating the Department of Commerce which are administered outside of that department. In the interest of economy, efficiency of administration, and better service to the public, he urged that all such functions should be at once concentrated in three different groups: (a) industry, (b) trade, (c) navigation, and each should be under an assistant secretary.<sup>15</sup>

The American Engineering Council of the Federated American Engineering Societies has proposed the creation of a "national public works bureau, by means of a reorganization of the Department of the Interior."<sup>16</sup> A nation-wide movement has been instituted to agitate for the creation of a Department of Education.<sup>17</sup> A Department of Colonial Affairs was proposed to President Harding,<sup>18</sup> while a representative of the League of Artists placed before the Chief Executive a proposal for the creation of a Department of Fine Arts.<sup>19</sup>

**Opposition to the Creation of New Departments.** It is evident that from the very nature of these proposals, which often present conflicting viewpoints, they are bound to meet with considerable opposition. Organized labor has protested against the proposed transfer of the Children's Bureau and the Women's Bureau to a Department of Welfare,<sup>20</sup> while those advocating a Department of Education are also opposed to the creation of such a department.<sup>21</sup> Medical associations have gone on record as opposed to the creation of a Department of Public Health.<sup>22</sup> Prominent educators have announced their opposition to any proposed federal supervision of education by the creation of a new bureau or department at Washington.<sup>23</sup>

<sup>15</sup> Secretary of Commerce, Annual report, 1922, 33.

<sup>16</sup> *New York Times*, November 19, 1920.

<sup>17</sup> *Chicago Daily Tribune*, February 21, 1921.

<sup>18</sup> *Washington Herald*, July 14, 1921.

<sup>19</sup> A cabinet officer for art, *Literary Digest*, April 30, 1921.

<sup>20</sup> *New York Times*, May 13, 1921; *Ibid.*, October 16, 1921.

<sup>21</sup> *New York Times*, December 10, 1920; *Ibid.*, May 12, 1921.

<sup>22</sup> *Ibid.*, July 26, 1921.

<sup>23</sup> *New York Times*, January 16, 1922.

**Preliminary Plan of Joint Committee on Reorganization.** The preliminary plan of the Joint Committee on Reorganization was submitted to President Harding on January 21, 1922.<sup>24</sup> It was the subject of cabinet discussion and private conferences between the President and individual members of his Cabinet. Although no formal announcement has been made concerning the nature of the proposed reorganization, as drawn up by the Joint Committee, yet numerous intimations have been given out from time to time indicating some of the specific changes deemed desirable. President Harding's admitted inclination to favor the creation of a Department of Public Welfare, no doubt, influenced the committee to include such a department in its reorganization program.<sup>25</sup> The advisability of a consolidation of the War and Navy departments into a Department of National Defense seems to have won the recognition of the committee.<sup>26</sup> The creation of the office of Executive Secretary or Assistant to the President is said to be a part of the committee's recommendations.<sup>27</sup> Nothing has as yet been announced, however, with respect to the attitude taken by the committee toward the retention of existing independent administrative establishments, although that subject can hardly have escaped the serious attention of that body.

**Recommendations of the President.** On February 13, 1923, President Harding submitted to Mr. Walter F. Brown, chairman of the Joint Committee on Reorganization, a chart exhibiting in detail the existing organization of the government departments and the changes suggested, after numerous conferences and consultations with the various heads of the executive branch of the government. The changes, with few exceptions, notably that of consolidating all agencies of national defense, received the sanction of the Cabinet, although it was admitted by the President that the delay in submitting this report to the Joint Committee was caused solely by the difficulty encountered in reconciling the views of the various persons charged with the responsibility of administering the executive branch of the government.

<sup>24</sup> *Ibid.*, January 22, 1922.

<sup>25</sup> *Ibid.*, May 8, 1921; December 16, 1921.

<sup>26</sup> *Washington Herald*, July 14, 1921; *Chicago Daily Tribune*, January 12, 1922.

<sup>27</sup> *Washington Herald*, August 18, 1921.

The outstanding recommendations submitted by the President are as follows: (1) The consolidation of the Military and Naval Establishments under a single Cabinet officer, as the Department of National Defense; (2) the transfer of all non-military functions from the War and Navy departments to civilian departments—chiefly Interior and Commerce; (3) the elimination of all non-fiscal functions from the Treasury Department; (4) the establishment of one new department—the Department of Education and Welfare; (5) the change of the name of the Post Office Department to Department of Communications; and (6) the attachment to the several departments of all independent establishments except those which perform quasi-judicial functions or act as service agencies for all departments. Mention should also be made of the division of work in certain of the departments, namely, Undersecretaries for the Army, for the Navy, and for National Resources in the Department of National Defense; Assistant Secretaries in charge of the administration of the public domain and the construction and maintenance of public works, in the Department of the Interior; Assistant Secretaries for the promotion of industry, the promotion of trade, and the development, regulation and protection of the merchant marine, in the Department of Commerce; and Assistant Secretaries in charge of Education, Health, Social Service, and Veteran Relief, in the proposed Department of Education and Welfare.<sup>28</sup>

Congress, by joint resolution of March 4, 1923, has continued the Joint Committee on the Reorganization of Government Departments until July 1, 1924, and it may be confidently expected that the committee will present its conclusions to the next Congress for its consideration and possible action.<sup>29</sup>

**Outstanding Defects in Existing Organization.** Whatever the exact program of administrative reorganization adopted by Congress, the present movement in favor of such regrouping of administrative services has at least served to emphasize three or four outstanding defects in the present plan of national administrative organization. First, a number of the present executive departments, such as the Treasury Department and the Department of the

<sup>28</sup> 67 Cong. 4 sess. (1922-23), S. doc. 302.

<sup>29</sup> 67 Cong., Public Res. 100, Mar. 4, 1923.

Interior, have been given charge of bureaus which have no relation to the proper functions of those departments. A second defect which characterizes the existing organization is the location in different departments of administrative services which ought to be closely associated, such as the public works agencies of the government. In the third place, there is no adequate machinery provided in the existing governmental organization for the control and management of the administrative branch as a whole. Finally, attention has been called to the large number of establishments, varying in size and importance, which are completely outside of any of the ten executive departments. While these services are nominally under the direction of the President, that officer is unable to keep in touch with their multifarious activities, and as a result, those agencies carry on their work without the guiding and coördinating influences which would grow out of their association with other offices under a department head. In spite of the recognized disadvantages in the establishment of these independent agencies, the ever-increasing sphere of governmental supervision and control tends to increase their number. Recent proposals for the creation of such independent agencies include the following: A National Coal Mining Board, similar in organization to the existing Railroad Labor Board;<sup>30</sup> a Prohibition Bureau, to centralize the control of all prohibition activities, including the issue of permits, enforcement, and prosecution;<sup>31</sup> a Commissioner General of Transportation, to advise with all governmental agencies, including the committees of Congress, charged with the regulation of interstate commerce;<sup>32</sup> and a National Agricultural Credits Corporation to take over the assets of the present War Finance Corporation.<sup>33</sup>

<sup>30</sup> *New York Times*, January 28, 1922; February 15, 1922.

<sup>31</sup> *Ibid.*, February 23, 1922.

<sup>32</sup> *Ibid.*, February 2, 1922; February 9, 1922.

<sup>33</sup> *Ibid.*, April 4, 1922.

## CHAPTER XXIV

### CONCLUSION

The development of national administrative organization in the United States has been determined, not by constitutional provisions, but by the successive enactments of Congress, supplemented by the issuance of administrative regulations. Numerous proposals in the Constitutional Convention of 1787 seeking to provide for the organization of the administrative branch of the national government were rejected, and in consequence, the fundamental law of the United States makes only an indirect reference to the subject of administrative organization. The first Congress, meeting in 1789, was called upon, therefore, to make full provision for the organization of that important branch of the government. Many of the members of that Congress were thoroughly informed with respect to the successes and failures of their predecessors, the members of the Continental Congress, and the Congress of the Confederation, in attempting to provide an efficient system of administrative organization. Influenced by the fact that, after several years of experimenting with administration by committees and boards, the Congress of the Confederation had established in 1781, a number of single-headed administrative departments, and by indirect reference in the Constitution to "the principal officers in each of the executive departments," and to the "heads of the departments," which were regarded as indicative of the intention of the framers of that instrument with respect to the establishment of administrative or executive departments in charge of single officers, Congress provided in 1789 for the establishment of a system of single-headed administrative departments, which has served as the basic foundation for the subsequent development of national administrative organization.

In providing for the internal organization of the first executive departments, Congress did not pursue a uniform policy. No attempt was made by that body to prescribe the organization of the Department of State or of the Department of War, which, accordingly,

were organized at the instance of their respective Secretaries. With respect to the Treasury Department, however, Congress expressly provided for certain subordinate officers, under the general direction of the Secretary, and also prescribed their duties in considerable detail. These two modes of organizing the executive departments of the national government still constitute an outstanding characteristic of national administrative organization.

During the period from 1790 to 1860 two additional executive departments were established which were charged, respectively, with the administration of naval affairs and internal affairs. The establishment of the latter was due, not so much to the importance of domestic affairs, but rather to the need for ridding existing departments of services which were foreign to the major function of those departments. As a result, the services transferred to the Department of the Interior, although all were concerned with some phase of internal affairs, were not closely related. This combination of unrelated bureaus and offices into a single executive department has been characteristic of the organization of the Department of the Interior since its establishment in 1849.

The system of single-headed administrative control inaugurated by Congress in 1789 was a predominant feature of national administrative organization prior to the Civil War. The most striking departure from that principle was furnished by the Department of the Navy, which, during the period from 1815 to 1842, was administered by a Board of Navy Commissioners, subject to the direction of the Secretary of the Navy. The disadvantages of such a system soon became apparent, however, and in 1842, Congress created a number of single-headed administrative bureaus in that department.

The elevation of the Attorney General's Office to the status of an executive department in 1870 was the result of disclosures made by the Joint Committee on Retrenchment as to the amount expended by the several departments and administrative establishments for legal aid during the Civil War period, although such action had been made the subject of frequent recommendations by successive Presidents and Attorneys General since 1816. Since the creation of that department, three additional departments have been established to further the respective interests of agriculture, commerce, and labor—subjects which, prior to the Civil War, had been generally considered as outside the proper sphere of governmental super-

vision and control. Previous to their establishment as executive departments, with representation in the President's Cabinet, the Department of Agriculture, and, for a period of years, the Department of Labor, had been established as inferior departments, in charge of Commissioners, who, although they were not admitted to the President's inner council, were directly responsible to that officer and not to the head of any of the several executive departments.

Important and far-reaching changes in the organization of the War and Navy departments, characterized especially by the creation of the General Staff organization in the former, and by the establishment of the Office of Naval Operations in the latter, have come as the result of experience gained, oftentimes at great cost, during the several military and naval conflicts in which the United States has been engaged. After undergoing important changes in 1894, as a part of the Treasury Department, the audit and accounting system of the national government has been separated entirely from that department and given a detached status, practically independent of executive control. The long-standing defect in the organization of the Treasury Department, namely, the placing under its jurisdiction of a large number of administrative services unrelated to financial and currency affairs, was partially remedied by the transfer of a number of those services to the Department of Commerce and Labor, upon the establishment of that department in 1903.

Beginning with the creation of the Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887, an increasing number of permanent detached boards and commissions, as well as some bureaus, have been established, which are independent of the ten executive departments. This tendency has been especially noticeable since 1913, largely due to the extension of governmental control and supervision over banking and currency, shipping, and trade and commerce. Through the creation of these permanent detached bureaus, boards, and commissions, as well as by giving to the bureaus in several of the departments a large measure of autonomy, Congress has seriously undermined the departmental system of administrative organization, and has departed, in a number of instances, from the system of single-headed administrative control.

The administrative problems connected with the mobilization of the agricultural, commercial, and industrial resources of the nation during the period of United States participation in the World War were, to a large extent, entrusted to special war agencies created for the period of emergency. While the existing civil departments and establishments of the government coöperated actively with these services, they were not fitted, either in personnel, organization, or powers, to accept the full responsibility for carrying out the war program. Except for certain services created prior to 1917, the various war agencies have been disbanded entirely, or greatly curtailed in activities and organization.

The present movement in favor of the creation of additional executive departments and bureaus, and the reorganization of the entire administrative branch of the national government, has for its primary purpose the regrouping of administrative agencies and the reassignment of administrative activities to insure the most economical and effective prosecution of the proper objects of government as they have been determined by Congress. One of the most important features in the proposed programs for reorganization is that providing for a Bureau of Administration or Office of Assistant to the President through which the President could effectively exercise his authority as directing head of the administration. The present Budget Bureau, acting in conjunction with the several coördinating agencies recently created by Executive order, is performing many of the duties which would logically fall under such a Bureau of Administration, and, as it is only nominally under the jurisdiction of the Treasury Department, should be transferred to the Office of the President. Except for those agencies which are primarily engaged in the exercise of quasi-judicial or quasi-legislative powers, or which are serving the entire administrative branch of the government, all of the existing independent agencies should be placed under the jurisdiction of some one of the executive departments. It is to be hoped that the present bill being formulated by the Joint Committee on Reorganization, subject to the approval of the President, will go far toward removing the defects in the present system, and will restore, as far as possible, the departmental system of administrative organization as first established in 1789.

OUTLINE OF EXISTING ORGANIZATION OF THE EXECUTIVE DEPARTMENTS AND  
INDEPENDENT ESTABLISHMENTS

THE PRESIDENT

*Executive Office*

Secretary to the President

Executive Clerk

Chief Clerk

*Department of State*

Secretary of State

Undersecretary of State

Office of Economic Adviser

Division of Latin-American Affairs

Division of Mexican Affairs

Division of Current Information

Division of Publications

Editor of the Laws of Congress

Assistant Secretary

Division of Western European Affairs

Division of Near Eastern Affairs

Division of Eastern European Affairs

Bureau of Appointments

Second Assistant Secretary

Division of Passport Control

Visa Office

Diplomatic Bureau

Bureau of Indexes and Archives

Third Assistant Secretary

Division of Far Eastern Affairs

Bureau of Accounts

Office of Ceremonials

Director of the Consular Service

Consular Bureau

Budget Office

Consular Commercial Office

Office of Consular Personnel

Division of Political and Economic Information

Office of Chief Clerk

Solicitor

United States Sections, International Commissions

*Department of War*

Secretary of War

Assistant Secretary

Procurement Division

Sales Division

Foreign Claims Section

National Military Parks and Cemeteries

Assistant and Chief Clerk

Division of Civilian Personnel

Disbursing Clerk

Division of Mail and Record

Division of Printing and Advertising  
Division of Supply  
Division of Telephone  
Division of Telegraph  
Postal Station  
General Staff  
    Personnel Division  
    Military Intelligence Division  
    Operations and Training Division  
        Army War College  
    Supply Division  
    War Plans Division  
Office of the Adjutant General  
Office of the Inspector General  
Office of the Judge Advocate General  
Office of the Quartermaster General  
Office of the Surgeon General  
Office of the Chief of Finance  
Office of the Chief of Ordnance  
Office of the Chief of Chemical Warfare Service  
Office of the Chief of Chaplains  
Office of the Chief Signal Officer  
Office of the Chief of Air Service  
Office of the Chief of Infantry  
Office of the Chief of Cavalry  
Office of the Chief of Field Artillery  
Office of the Chief of Coast Artillery  
Office of the Chief of Engineers  
    Board of Engineers for Rivers and Harbors  
    Lakes Survey  
    Mississippi River Commission  
    California Debris Commission  
    Board of Road Commissioners for Alaska  
    Office of Public Buildings and Grounds  
Militia Bureau  
Bureau of Insular Affairs  
Inland and Coastwise Waterways Service  
War Credits Board  
Military Academy  
Soldiers' Home  
Panama Canal  
*Department of the Treasury*  
Secretary of the Treasury  
Undersecretary of the Treasury  
    Bureau of the Budget  
    Commissioner of Accounts and Deposits  
    Division of Bookkeeping and Warrants  
    Division of Deposits  
Treasurer of the United States  
Comptroller of the Currency  
Federal Farm Loan Bureau  
Section of Statistics

**Government Actuary**  
**Budget and Improvement Committee**  
**Assistant Secretary in Charge of Fiscal Offices**  
    Commissioner of the Public Debt  
        Division of Loans and Currency  
        Register of the Treasury  
        Division of Public Debt Accounts and Audit  
        Division of Paper Custody  
        Savings Division  
    Bureau of Printing and Engraving  
Mint Bureau  
Secret Service Division  
Disbursing Clerk  
**Assistant Secretary in Charge of Foreign Loans and Miscellaneous**  
    Chief Clerk  
        Division of Mail and Files  
Bureau of Supply  
    General Supply Committee  
Division of Appointments  
    Section of Surety Bonds  
Bureau of Public Health Service  
Division of Printing and Stationery  
**Assistant Secretary in Charge of the Collection of the Revenues**  
    Bureau of Internal Revenue  
        Prohibition Commissioner  
    Customs Service  
    Coast Guard  
    Supervising Architect's Office

*Department of the Navy*

Secretary of the Navy  
    Naval Aide  
    Marine Aide  
Assistant Secretary  
    Aide to the Assistant Secretary  
    Aide for Navy Yards (Navy Yard Division)

Chief Clerk  
    Disbursing Clerk  
    Estimate Clerk  
Appointment Division  
Division of Records  
    Historical Section

Chief of Naval Operations  
    Aide to the Admiral  
    Assistant Chief of Naval Operations

War Plans Division  
    Policy and Liason Section

Ship Movements Division  
Intelligence Division (Office of Naval Intelligence)  
Communication Division (Office of the Director of Naval Communications)  
Material Division

Naval Districts Division  
Submarine Division  
Inspection Division (Board of Inspection and Survey)  
Gunnery Exercises and Engineering Performances Division  
Bureau of Navigation  
    Hydrographic Office  
    Naval Observatory  
        Nautical Almanac Office  
    Naval Academy  
Bureau of Yards and Docks  
Bureau of Ordnance  
Bureau of Construction and Repair  
Bureau of Engineering  
Bureau of Aeronautics  
Bureau of Supplies and Accounts  
Bureau of Medicine and Surgery  
    Naval Medical School  
Judge Advocate General  
    Solicitor  
Major General Commandant, Marine Corps  
    Assistant to the Major General Commandant  
    Director of Operations and Training  
Adjutant and Inspector's Office  
    Paymaster's Office  
    Quartermaster's Office  
General Board  
Naval Consulting Board  
Compensation Board  
Naval Examining Board  
Naval Retiring Board  
Board of Medical Examiners  
Board on Navy Yards and Stations  
Experimental and Research Laboratory

*Department of Justice*

Attorney General  
    Special Assistant to the Attorney General  
    Private Secretary and Assistant to the Attorney General  
War Frauds Section  
Solicitor General  
Assistant to the Attorney General  
    Anti-Trust Division  
Assistant Attorney General  
    Public Lands Division  
        Attorney in Charge of Titles  
Assistant Attorney General  
    Division for the Defense of Suits against the United States in  
        the Court of Claims and District Courts  
Assistant Attorney General in Charge of Administration  
    Chief Clerk and Administrative Assistant  
        Disbursing Clerk  
        Appointment Clerk  
        Librarian

General Agent  
Division of Accounts  
Bureau of Investigation  
Superintendent of Prisons  
Attorney in Charge of Pardons  
Assistant Attorney General  
Division of Admiralty Litigation  
Assistant Attorney General  
Division of Taxation, Insurance, Prohibition, and Minor Regulations of Commerce  
Assistant Attorney General  
Criminal Division  
Assistant Attorney General  
Customs Division  
Solicitor for the Department of State  
Solicitor of the Treasury  
Solicitor of Internal Revenue  
Solicitor for the Interior Department  
Solicitor of the Department of Commerce  
Solicitor for the Department of Labor

*Post Office Department*

Postmaster General  
First Assistant Postmaster General  
Chief Clerk  
Post Office Service Division  
Postmasters' Appointments Division  
Dead Letter Division  
Second Assistant Postmaster General  
Chief Clerk  
Railway Mail Service Division  
Railway Adjustments Division  
Foreign Mails Division  
Air Mail Service Division  
Third Assistant Postmaster General  
Chief Clerk  
Finance Division  
Stamp Division  
Registered Mails Division  
Money Orders Division  
Classification Division  
Office of the Director of Postal Savings  
Fourth Assistant Postmaster General  
Chief Clerk  
Motor Vehicle Service Division  
Rural Mails Division  
Equipment and Supplies Division  
Mail Equipment Shops  
Chief Clerk  
Appointment Clerk  
Disbursing Clerk  
Purchasing Agent  
Comptroller

Chief Inspector  
Special Assistant to the Attorney General  
Solicitor

*Department of the Interior*

Secretary of the Interior  
First Assistant Secretary  
General Land Office  
Reclamation Service  
National Park Service  
Assistant Secretary

Bureau of Indian Affairs  
Superintendent of the Five Civilized Tribes  
Bureau of Pensions  
Patent Office  
Bureau of Education  
St. Elizabeth's Hospital  
Howard University  
Freedmen's Hospital  
Alaska  
Hawaii

Chief Clerk

Division of Appointments, Mails, and Files  
Division of Publications  
Disbursing Division  
Division of Supplies  
Miscellaneous Division  
Geological Survey  
Bureau of Mines  
Government Fuel Yard  
Alaskan Engineering Commission  
Board of Indian Commissioners  
War Mineral's Relief Commissioner  
Solicitor

Board of Appeals  
Columbia Institution for the Deaf  
Returns Office

*Department of Agriculture*

Secretary of Agriculture  
Assistant Secretary of Agriculture  
Office of Editorial and Distribution Work  
Assistant in Charge of Editorial Office  
Assistant in Charge of Office of Distribution  
Press Service  
Chief Clerk  
Appointment Clerk  
Officer in Charge of Supplies  
Division of Accounts and Disbursements  
Library  
Director of Scientific Work  
Office of Experiment Stations

Director of Extension Work  
Office of Coöperative Extension Work  
Office of Exhibits  
Office of Motion Pictures  
Director of Regulatory Work  
Federal Horticulture Board  
Insecticide and Fungicide Board  
Packers and Stockyards Administration  
Grain Futures Administration  
Weather Bureau  
Bureau of Animal Industry  
Bureau of Plant Industry  
Forest Service  
Bureau of Chemistry  
Bureau of Soils  
Bureau of Entomology  
Bureau of Biological Survey  
Bureau of Public Roads  
Bureau of Agricultural Economics  
Bureau of Home Economics  
Fixed Nitrogen Research Laboratory  
Solicitor

*Department of Commerce*

Secretary of Commerce  
Assistant Secretary  
Chief Clerk  
Disbursing Clerk  
Appointment Division  
Division of Publications  
Division of Supplies  
Solicitor  
Bureau of the Census  
Bureau of Foreign and Domestic Commerce  
Bureau of Standards  
Bureau of Fisheries  
Bureau of Lighthouses  
Coast and Geodetic Survey  
Bureau of Navigation  
Steamboat-Inspection Service

*Department of Labor*

Secretary of Labor  
Assistant Secretary  
Second Assistant Secretary  
Chief Clerk  
Disbursing Clerk  
Appointment Clerk  
Division of Publications and Supplies  
Library  
Division of Conciliation  
United States Employment Service  
Bureau of Industrial Housing and Transportation  
Solicitor  
Bureau of Immigration

Bureau of Naturalization

Bureau of Labor Statistics

Children's Bureau

Women's Bureau

*Independent Establishments*

Smithsonian Institution

National Museum

National Gallery of Art

Bureau of American Ethnology

International Exchanges

National Zoological Park

Astrophysical Observatory

Regional Bureau for the United States: International Catalogue of  
Scientific Literature

National Academy of Sciences

National Research Council

General Accounting Office

Civil Service Commission

United States Shipping Board

United States Shipping Board Emergency Fleet Corporation

Federal Trade Commission

Tariff Commission

Railroad Labor Board

Bureau of Efficiency

Federal Reserve Board

War Finance Corporation

Alien Property Custodian

Employees' Compensation Commission

United States Veterans' Bureau

United States Railroad Administration

National Screw Thread Commission

Federal Board for Vocational Education

National Advisory Committee for Aeronautics

Federal Power Commission

Geographic Board

Rock Creek and Potomac Parkway Commission

Commission of Fine Arts

National Home for Disabled Soldiers

Superintendent of the State, War, and Navy Buildings

Federal Narcotics Control Board

United States Coal Commission

Federal Fuel Distributor

World War Foreign Debt Commission

ADMINISTRATIVE AGENCIES UNDER CONGRESSIONAL DIRECTION

Library of Congress

Copyright Office

Legislative Reference Service

Government Printing Office

Superintendent of Public Documents

Architect of the Capitol

Botanic Garden

National Forest Reservation Commission

Public Buildings Commission

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## VITA

The author of this monograph, Lloyd Milton Short, was born in Knoxville, Knox County, Illinois, February 3, 1897. The following year his parents moved to Galesburg, Illinois, where he received his early education. He was graduated from Galesburg High School in 1915 as valedictorian, and in the fall of that year entered Knox College, Galesburg, Illinois, having been awarded a scholarship in that institution on the strength of his high school scholastic record.

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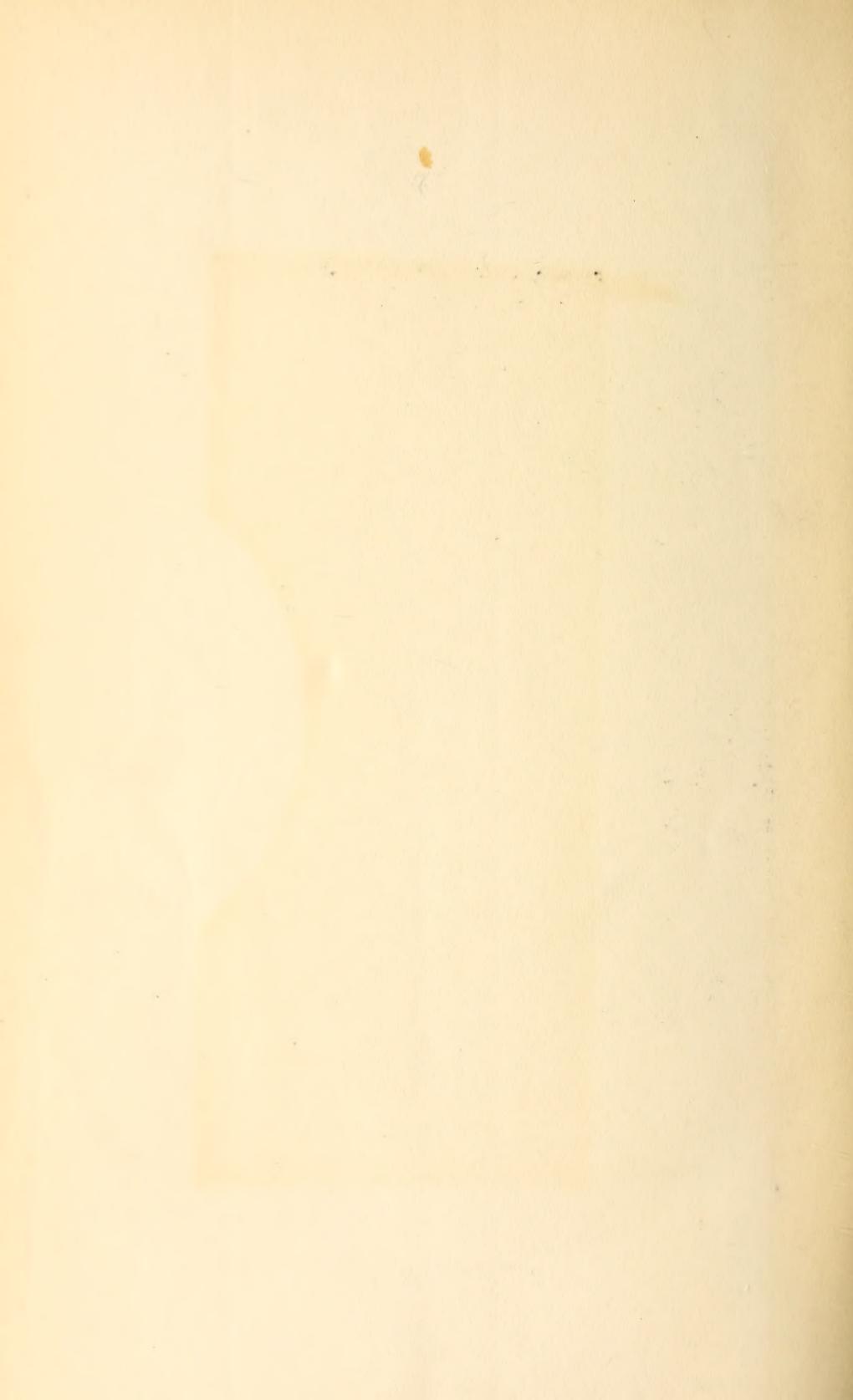












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